The Senate met at 9:31 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

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

Let us pray.

Eternal Saviour, we need You every hour of every day. We not only need You during crisis times but also in the solitary moments of daily living.

Lord, our lawmakers need You. As they open their hearts to You, fill them with power for today’s tasks. Show them Your will for our times and give them the wisdom to say, “Speak, Lord, for we are listening.” May the inspiration they receive from You keep their hearts pure, their minds clear, their words true, and their deeds kind.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE
PRESIDENT PRO TEMPORE

To the Senate:

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Madam President, after leader remarks, we are going to be in a period of morning business for up to an hour. During that period of time, Senators will be allowed to speak for up to 10 minutes each. The Republicans will control the first half, and the majority will control the second half.

Following morning business, we will proceed to the tobacco legislation, H.R. 1256. Two amendments are currently pending to the Dodd substitute amendment; that is, the Burr-Hagan substitute and a Lieberman amendment regarding TSP. Senator HAGAN will be here as soon as we complete morning business to offer some amendments. The Republican leader and I thought it would be appropriate that Senators who have amendments relating to the bill that are relevant and germane would offer their amendments first, and those Senators are HAGAN and BURR. So we want them to get whatever amendments they want to offer laid down so that we can go to other matters people wish to bring up.

I announce that I have had, frankly, a number of conversations with Senators on both sides, and there are a number of important events today—this evening, I should say—so we are not going to be working late tonight. I think if we go to 6 o'clock, that will probably be about as far as we go. There is a funeral service for one of the employees of the Senate who has worked in the Capitol for many years who was killed in a car accident on Sunday. We have to make sure the people who want to go to that have that opportunity. There are a number of other events, including something at the Vice President’s residence this evening. So everyone should be alerted to that.

I had a conversation with the Republican leader yesterday about the schedule for the next work period. We have 3 weeks left in this work period, and we have things we want to do. I have explained to the Republican leader that we would like to do at least two appropriations bills. I have indicated that to Chairman INOUYE, and he has conveyed that to Ranking Member COCHRAN. We want to at least get the legislative branch legislation out of the way and Homeland Security out of the way.

There are other things, of course, we are going to work on during this work period. We have the supplemental appropriations bill that we need to complete within the next couple of days. We have this tobacco legislation which we need to complete. There is a tourism bill which was completed and reported out of the Commerce Committee which is bipartisan and important. It is interesting. In every State in the Union, tourism is important. It is either the No. 1, 2, or 3 most important part of the State’s economy. We are going to try to complete that this work period. So we have a lot of things to do.

The next work period, in July, where we have 5 weeks, we will have by then completed, we hope, the legislative branch appropriations, and we will have completed Homeland Security. We have appropriations bills we want to work on. We have health care that will likely be worked on during that period of time.

We have the DOD authorization, which is extremely important. Not only does it have the standard stuff in it that we always did, but we also have to do something about military commissions. This involves the situation we have with enemy combatants and
other people who need to be tried in military courts and who can’t be tried, for various reasons, in civil courts. That is going to be a part of the DOD authorization this year, which will make it difficult. We have to do that because we have passed a law that was declared unconstitutional by the Federal courts. So we have to do that.

We also have to make a decision as to whether we are going to be able to do the Supreme Court nomination during the next work period or whether that will spill over until the next period, which would be September. I have spoken with the Republican leader about that, and he has indicated he is going to be communicating with me as to what he thinks should be done in more detail than our brief conversation yesterday.

So the reason I am talking about this today is to alert all Senators, as I did yesterday, that the next 5 weeks is going to be a unique work period in the Senate. Because of the makeup of the Senate changing over the years and it becoming a place where there is an obligation put on us with their families, some of us aren’t able to work the long weeks we have in the past. We have plenty of work to do. No one is complaining that we are not working hard enough, but sometimes you just have to put in the time because of the procedural obligations we have here, procedural rules we have to follow in the Senate.

So the next work period, which is July 5 through August 7, which is 5 weeks long, that is going to be the no-vote day, and that is July 16. The reason for that is as I have outlined. We are going to conduct business on Mondays and Fridays, and there will be rollcall votes on those days. That is the plan.

I have advised that the no-vote day is Friday, July 17, not July 16. So everything I have said other than that is valid. July 16 is a Thursday.

For example, health care—we cannot complete that most important legislation by working just Tuesday through Thursday.

I had a chairmen’s meeting yesterday. We meet every other week with all of the chairmen. It was clear from conversations I had with all of our chairmen that we are going to have to have a very long, hard work period in July. If there are questions anyone has or special circumstances, they can contact the Republican leader or me, and we will be happy to make a look, but everyone is on notice that is where we are. So with respect to your scheduling on Mondays and Fridays, be very careful because we are not going to be able to come in here on Mondays at 5:30. We are going to have to have regular workdays.

Mr. MCCONNELL, Madam President, I ask my friend before he leaves the floor, what was the no-vote day in the July work period?

Mr. REID. July 17.

Mr. MCCONNELL. The 17th. I thank the leader.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

HEALTH CARE REFORM

Mr. MCCONNELL. Madam President, one thing that unites Democrats and Republicans this morning is that all of us want health care reform in this country. Americans want reform that addresses the high cost of care and gives everyone access to quality care. In America in 2009, doing nothing is simply not an option. We must act, and we must act decisively. The question is not whether to reform health care; the question is how best to reform health care.

Some are proposing as a reform that the government simply take over health care, but Americans have seen the government take over banks, they have seen the government take over insurance companies, they have seen the government take over auto companies, all of that in recent months, and they are concerned as we discuss health care reform, it is understandable that many Americans would be equally if not more concerned about a government takeover of health care.

Some are openly calling for this government take over health care, making no apologies about it. Others disguise their intentions by arguing for a government “option” that we all know will really lead to government-run health care being the one and only option. It is what most companies have to go through. Bailed out insurers just have to ask for more money, and the government hands it over. Apply this model to health care, and the government would be able to create the same kind of unfair, level playing field that puts other companies at a disadvantage and only ends up hurting consumers in the end.

We have seen this with the insurance bailouts. When most companies want to raise money, they have to show they are viable and their products and services are a worthwhile investment. That is what most companies have to go through. Bailed out insurers just have to ask for more money, and the government hands it over. Apply this model to health care, and the government would be able to create the same kind of unfair, level playing field that puts other companies at a disadvantage and only ends up hurting consumers in the end.

We have seen this with the insurance bailouts. When most companies want to raise money, they have to show they are viable and their products and services are a worthwhile investment. That is what most companies have to go through. Bailed out insurers just have to ask for more money, and the government hands it over. Apply this model to health care, and the government would be able to create the same kind of unfair, level playing field that puts other companies at a disadvantage and only ends up hurting consumers in the end.

The American people want health care reform, but creating a government disadvantage as it struggles to compete with government-run auto companies such as GM. If Ford needs money, it has to raise it at an 8-percent rate of interest. If GM wants money, it has to do is to call up the Treasury and ask for it. No company can compete with that.

This is how the government subsidizes failure and undercut private companies, and this is how a government-run health care plan would operate. Private health care plans, forcing people off the health plans they like and replacing those plans with plans they like less.

No safeguard could prevent this from happening. Eventually, Americans would be stuck with government-run health care whether they like it or not. That is when the worst scenario would take shape, with Americans subjected to bureaucratic hases, hours spent on hold waiting for a government service representative to take a call, restrictions on care, and, yes, lifesaving treatment and lifesaving surgeries denied or delayed. Medical decisions should be made by doctors and patients, but once the government is in control, politicians and bureaucrats would be the ones telling people what kind of care they can have. Americans could find themselves being told they are too old to qualify for a procedure or that a treatment that could extend or improve their lives is too expensive.

If anybody doubts this can happen, they should consider what happened to Bruce Hardy.

Bruce was a British citizen suffering from cancer. His doctor wanted to prescribe a drug that was proven to delay the spread of the cancer and may well have extended his life. But the government bureaucrats who run Britain’s health care system turned him down, saying the drug was too expensive. The British Government told Bruce his life wasn’t worth prolonging because of what it would cost the government to buy the drugs he needed. The government decided that Bruce Hardy’s life wasn’t worth it.

Or take the case of Shona Holmes, a Canadian citizen who was told by the bureaucrats running the health care system in that country she would have to wait 6 months—6 months—to see a specialist to treat her brain tumor. Here is how Shona described her plight:

If I had relied on my government, I would be dead.

Shona’s life was eventually saved, fortunately, because she came to the United States for the care she needed. With her vision deteriorating, she went to the Mayo Clinic in Arizona, and the doctors there told her immediate surgery would be needed to prevent permanent vision loss and maybe even death. Meanwhile, the government-run system in Canada would have required more appointments and more delays. Ms. Holmes got the treatment she needed when she needed it, in the United States.

The American people want health care reform, but creating a government...
bureaucracy that denies, delays, and ration health care is not the reform they want. They don’t want the people who brought us the Department of Motor Vehicles making life-and-death decisions for them, their children, their spouses, and their parents. They don’t want to end up like Bruce Hardy or Shona Holmes.

GUANTANAMO BAY

Mr. MCCONNELL. Madam President, on a very timely subject, we understand that discussions are underway on the conference report on the supplemental. I think it is important to remind everybody in the House and in the Senate that, just a few weeks ago, the Senate answered the question that has concerned Americans and that is this: whether the terrorist detainees at Guantanamo Bay, Cuba, should be transferred state-to-state to facilities that could be in or near their communities.

The act that the Senate passed, the Senate said: No way, not without a plan. It passed the bipartisan Inouye-Inhofe amendment that bars the administration from transferring these terrorist detainees into the United States.

This is not a change in the Senate’s position. Just a few years ago, the Senate, by a vote of 91 to 3, said the same thing: We should not move some of the world’s most dangerous terrorists out of Guantanamo Bay, Cuba, to states where the American people don’t want to have terrorist detainees transferred into their State any more than the rest of America does.

It seems like the administration’s “political problem” is a diplomatic one with the Europeans, who want the United States to accept some of these dangerous terrorists before they will. It is not in the interest of the United States to compromise our security to appease our European critics.

Similar to most Americans, I am for keeping Guantanamo open. It is safe and secure away from our civilian population. Perhaps I could be persuaded to change my mind if the administration comes up with a plan. They have time to do that and still receive full funding for a plan through the regular order when we take up the 2010 appropriations bills in a few months.

But we should not rush to give the administration a blank check to do something, sight unseen, that Americans overwhelmingly oppose.

As Senate Democrats have often said, the Senate is not a rubber stamp. We should not flip-flop on our vote of a few weeks ago.

I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be no morning business for up to 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time to be equally divided and controlled between the two leaders, or their designees, with the Republicans controlling the first half and the majority controlling the second half.

The Senator from Oklahoma is recognized.

HEALTH CARE

Mr. COBURN. Madam President, I have given a lot of thought to this, and I appreciate what the leader said about health care. I am the only practicing physician in the Senate. We have one of our colleagues who is no longer practicing. But it struck me, as a physician, that what we should do in health care ought to be what patients want us to do. What is it that the people—the very personal aspect of health care—would like to see?

There is no question we have big problems in health care. There is dissatisfaction in the insurance side with Medicare and Medicaid, and the lack of access. But what is it we should be talking about that will solve the insecurities, the problems, the concerns of the American people? I wish to go through with you a little list of items I think individuals in this country would agree with on how we ought to handle health care.

First, we ought to make sure health care is available to everybody in this country and that it is affordable. We can put this on a very timely subject, we understand that discussions are underway on the conference report on the supplemental. But we should not rush to give the administration a blank check to do something, sight unseen, that Americans overwhelmingly oppose.

As Senate Democrats have often said, the Senate is not a rubber stamp. We should not flip-flop on our vote of a few weeks ago.

I yield the floor.
Mr. VITTER. Madam President, I rise today to talk about the crucial issue of energy, to express real and deep concern that President Obama's energy proposals are, pure and simple, a huge package of new taxes on domestic energy production that will hurt this country and particularly hurt middle-class and working-class families, and to offer a clear alternative which is embodied in a bill I have introduced with 14 other Senators and 30 House Members, the No Cost Stimulus Act of 2009.

Energy plays a very unique and important role in our great society because energy—affordable, accessible energy—keeps our society running smoothly. It equalizes in our great society. Low-cost energy provides for the single mom working two jobs to be able to drive her kids to school in the morning or soccer practice on the weekend, the way a wealthy family can. Low-cost energy allows for an elderly couple living on Social Security to stay warm in the winter and cool in the summer, as Warren Buffett can.

In providing energy that is truly affordable and accessible to businesses and consumers, we not only grow the economy but also recycle wealth within our country. Without having government bureaucrats deciding what, when, and how we get our energy.

The final issue is we know one of the problems we have today—besides a recession—is this huge amount of people who are unemployed. Yet we also know 72 percent of all new job creation comes from small business. A proposal is floating out there that we are going to tax you, through a pay-or-play mandate, if you don’t provide health insurance or you own your own business or you are self-employed, they get a totally different look from the IRS about their health expenses. If your employer pays for it, you get to have for it or you are self-employed or you have your own business, you have to take dollars, after tax, and pay for your health care. So one of the things we have to do is equalize that so everybody is treated the same under the Tax Code for their health care.

How does that work out? Well, if your employer provides your health care, you get about $2,700 worth of tax benefits a year. But if you provide your own health care, you get only about $100 worth of tax benefit. It is ironic because it is so unfair to say you don’t get the same benefit under the Tax Code because you happen to either work in a place that doesn’t provide health insurance or you own your own business or you are self-employed.

The other issue I thought about that my patients would want is: What should we not do? What should we make sure we do not do? I think about my patients, and the last thing they want is more government involvement in their health care. We heard the minority leader talk about what happens in Canada when you get sick and how you have to wait and what happens in England when you get sick and are denied care because you are not worth it because of your age. Health care delayed, in the case of the lady he mentioned from Canada, is death. Health care denied, as he mentioned about the gentleman from England when you get sick and are denied care, which will put you in a hospital and nobody there and then the cost of health care.

As somebody who has practiced for 25 years in the field of medicine, obstetrics, and allergy, what I know is that we have a good health care system if we can get the government out of it and not put more government into it. What we need is fairness in access, fairness in the Tax Code, and allow the true American experiment to work in health care as we have had it work in so many other things.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.
So here we are in 2009 and, unfortunately, it seems to be back to the future, a repeat of that sad experience. The Obama administration is, again, proposing to increase taxes across the board in major ways on domestic energy production and on domestic utilities, which move us away from all of those energy decreases, a family may direct towards other needs.

Let’s look at exactly what these energy proposals, which are just tax increases, are.

First, a huge category of President Obama’s proposals is his so-called cap-and-trade plan. Let’s make no mistake. Cap and trade is a phrase in vogue. It has gained a lot of vogue. What it is about, again, is a tax on domestic utilities and domestic energy. It is a carbon tax. It is an energy tax, pure and simple. You can dress it up, you can make it sound complicated, try to confuse the public, but it is a tax on utilities, and it is a tax on energy.

Independent analysis by the Heritage Foundation estimates that the economic impact of the Waxman-Markey bill alone, with its numerous provisions, would be negative: reduce aggregate gross domestic product by $7.4 trillion; destroy 844,000 jobs, with peak years seeing unemployment rise by over 1.9 million jobs; raise electricity rates 90 percent after adjusting for inflation; raise gasoline prices by 74 percent after adjusting for inflation; raise natural gas that goes to residential customers, American families, by 55 percent; raise an average family’s annual energy bill by $1,500. That is a $1,500 a year tax bill on average family’s annual energy bill by going to residential customers, American families, by 55 percent; raise an average family’s annual energy bill by $1,500.

Energy Secretary Chu has argued clearly in the past that if the United States wanted to reduce its carbon emissions, policymakers would have to find ways to increase petrol prices, as he put it, to levels like we see in Europe. It is not a secret. Secretary Chu is saying we need to increase taxes on oil, the cost of gasoline. President Obama said on the campaign trail that he put it, to levels like we see in Europe.

Let me go back to what I think the four main goals of a sound energy policy are and are these major energy tax increases doing any of it?

No. 1, ensuring abundant energy for all Americans, including middle- and low-income Americans. The President is doing the opposite. He is taking away a great equalizer of our society. He is putting an enormous burden on working-class, middle-class families.

No. 2, growing the economy from our own abundant resources and trying to stop the outsourcing of jobs to other countries. The President’s plan is doing the opposite of that. He is putting taxes on a tax. He is putting taxes on oil and gas, and he is putting a tax on domestic energy which is going to increase the flow of jobs elsewhere.

No. 3, working vigilantly to achieve energy independence. It is a common sense that if you dramatically increase the taxes on energy here, you are going to increase energy dependence, not increase independence.

No. 4, we need to ensure that our efforts are consistent with our national energy independence consistent with national security. Taxing energy here will do exactly the opposite.

It is one thing to say no to bad ideas, but with that comes a responsibility to lay out clear, positive alternatives that provide a positive answer. I have done that, working with many other colleagues, in introducing our No Cost Stimulus Act of 2009. Again, I introduced this bill with 14 other Senators and with 30 House Members about 2 months ago.

As the title suggests, this bill is a comprehensive economic recovery bill. It is a solid energy bill that does not rely on borrowing money from China or anywhere else, increasing the outflow of taxpayer dollars in a time of already historic deficits.

The No Cost Stimulus Act of 2009 can achieve a number of positive outcomes—again, without further indebted our kids and grandkids—and specifically, it does six major things:

First, we can save or create more than 2 million long-term, sustainable, well-paying jobs.

Second, we can dramatically increase GDP that could exceed $10 trillion over the next 30 years.

Third, we would reduce the cost of energy to manufacturers, all U.S. businesses, and American families, including low-income families. On top of helping businesses compete internationally, that reduces the cost of a key input so that resources may be used on other purchases or employee hiring.

Fourth, we would have a real, positive impact on low-income families, as this is the equivalent of receiving a major stimulus check. As the price of energy decreases, a family may direct the extra money toward other needs.

Fifth, we can achieve these goals while not incurring huge amounts of new debt to foreign governments or to anyone else, leveraged against our kids’ and grandkids’ futures.

Sixth, this bill will have a direct and significant impact on reducing our dependence on foreign oil.

So again, you go back to those four main goals I laid out for sound energy policy. The No Cost Stimulus Act moved us toward those goals, unlike the President’s energy tax proposals, which move us away from all of those goals.

What does the No Cost Stimulus Act do exactly? It does three big things:

No. 1, it increases domestic production of energy. We produce more energy here at home on the Outer Continental Shelf, in Alaska, and from oil shale. We have enormous energy resources in this country. We are the only country in the world that has major resources but puts 56 percent of them off limits. This bill would change that.

No. 2—and this is very important—this bill would invest in alternative and renewable energy. We produce more energy here at home on the Outer Continental Shelf, in Alaska, and from oil shale. We have enormous energy resources in this country. We are the only country in the world that has major resources but puts 56 percent of them off limits. This bill would change that.

No. 3, and this is very important—this bill would invest in alternative and renewable energy. We produce more energy here at home on the Outer Continental Shelf, in Alaska, and from oil shale. We have enormous energy resources in this country. We are the only country in the world that has major resources but puts 56 percent of them off limits. This bill would change that.
through the royalty on energy production and devoting most of it to those investments in alternative and renewable energies. Again, we do this without borrowing money by establishing a renewable and alternative energy trust fund and putting funds from domestic production directly into that trust fund. In doing so, we do more for alternative and renewable energy than President Obama’s entire $800 billion stimulus plan.

No. 3, the third big thing the No Cost Stimulus Act of 2009 does, it streamlines the regulatory burden and clarifies environmental law. We streamline the review process for new nuclear energy production, and we prevent the abuse of environmental laws, which were not meant to be used as a way to simply stop and block all of these projects.

Madam President, I wish to close as I began. Energy is a big topic, and ensuring affordable, reliable energy is central to who we are as a country because energy is a great equalizer. We are a society of equals. We have never had distinct classes. We have always had great mobility. You can make it in America. If you are successful, you can do anything. You are not born into a class. You are not limited in that way. Affordable, reliable energy is a key equalizer that ensures that American way of life.

So what should energy policy be about? It should be about four things:

No. 1, ensuring affordable energy for all Americans, particularly middle- and low-income families, so that we keep that great equalizer in the center of our society, in the center of our economy.

No. 2, it should be a way to grow the economy with our abundant domestic resources, particularly as we need to get out of this serious recession.

No. 3, good energy policy should work us toward energy independence so we don’t have to depend on foreign sources.

No. 4, a good energy policy should ensure that it is consistent with national security, which, of course, increasing our energy independence is.

I truly believe the No Cost Stimulus Act of 2009 achieves all of those broad goals in a very significant way. Just as clearly, President Obama’s energy tax proposals, which cross the board increase the tax burden on utility bill payers and on domestic energy production, move us in the opposite direction.

President Obama said very recently about GM, in the midst of the latest GM bailout, that: ‘GM’ has been buried under an unsustainable mountain of debt, and piling an irresponsibly large debt on top of the new GM would mean simply repeating the mistakes of the past.

There is an old saying: What is good for GM is good for the country. I would like to modify that to say: What is true for GM is true for the country. So why are we piling an irresponsibly large debt on top of our existing historically high levels of debt in this country? We need another way. We need something like the No Cost Stimulus Act of 2009. We need to learn again how to generate wealth and a healthy economy. We need to refocus here at home on our abundant natural resources so that is the way we can have a sound energy policy that meets those four crucial goals I mentioned and allow us to work out of this severe recession—not by borrowing more from the Chinese, not by spending more taxpayers’ dollars, and it is all borrowed money right now—but focusing here at home on our own resources, on our own people, on good sustainable jobs we can build here toward a prosperous future and toward a new energy future.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. LIEBERMAN. Madam President, I rise today to describe and explain my amendment to H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. The central purpose of this legislation is to give the Food and Drug Administration the authority to regulate tobacco products. I support the bill’s goals and am an original co-sponsor of the Senate counterpart, S. 982.

Because the regulation of tobacco products under H.R. 1256 passes muster under budget rules only because of the increase in tax revenues generated by one federal employee retirement program, I want to make sure that the overall retirement system treats federal employees fairly. To accomplish this, I and colleagues on the Homeland Security and Governmental Affairs Committee—Senators COLLINS, AKAKA, and VOINOVICH—have developed this bipartisan amendment to make a number of reasonable changes and improvements to the federal employee retirement program. In addition to Senators COLLINS, AKAKA, and VOINOVICH, I would also like to thank Senators MURkowski, MIKULSKI, INOUYE, and BEGICH, who have all asked to be included as cosponsors of this amendment.

The central purpose of our amendment is to bring justice to federal employees who—because of quirks in the law, errors, and oversight—have lost retirement benefits for which they would otherwise be eligible. Many of the provisions of this amendment have the very strong support of federal employee unions and organizations of managers.

Our amendment would add back into the pending substitute amendment several of the reforms to the federal retirement system that were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I have prepared a complete written summary of these provisions, and I will ask consent that it be printed in the Record. Now I want to focus on those that are most significant.

One of the most important reforms in our amendment would lift retirement penalties now experienced by long-time federal employees under the Civil Service Retirement System who want to switch to part-time work at the end of their careers. The amount of an employee’s annuity is based, in part, on the highest rate of salary that the employee received over a period. Because an employee’s salary ordinarily reaches its highest rate at the end of the employee’s career, employees count on that end-of-career work period to help determine the amount of annuity. However, as the law now stands, employees who have a substantial period of service before April 1986, and who now switch to part-time work at the end of their careers, get part of their annuity determined on the basis of the amount of salary received, which, for the part-time work, is only a fraction of the rate of salary received. With retirement credit for part-time work so reduced, many employees have little incentive to stay on part-time, and simply opt to retire altogether.

Our amendment would fix this problem by using the rate of salary, not the amount of salary, for determining the entire amount of the employee’s annuity. This would be more responsive to the work experience of federal employees who have chosen to retire at an early age, or who now switch to part-time work at the end of their careers. This is one of the provisions in our amendment that was passed by the House as part of its version of H.R. 1256, and this provision is also very similar to a bill introduced by Senator Byrd and Senator Specter, S. 498, which was unanimously approved by the Homeland Security and Governmental Affairs Committee late last month by voice vote.

A second provision in our amendment would correct an injustice in calculating the retirement benefits for nonjudicial employees of the DC courts, the Court Services and Offender Supervision Agency and the DC
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Public Defender Service. Legislation in 1997 and 1998 converted these individuals from being employees of non-federal agencies into being federal employees. The converted employees were brought under the Federal Employees Retirement System, which essentially capped their eligibility for retirement and the amount of their benefits anew, without recognition of their previous service.

Some employees of these three agencies who retired years ago had they received credit for their years of service with the DC government. Instead, they are still serving to make up for time lost when they were transferred into the federal service. One provision in our amendment would simply require that the time served by these employees before their date of transfer from DC to federal service will count towards their overall federal retirement eligibility as "creditable service." This is a fair and just correction.

Another provision in our amendment will equalize the treatment of participants in the old Civil Service Retirement System and participants in the newer Federal Employees' Retirement System. This provision would allow important provision in our amendment would apply their unused sick leave in determining their length of service for the purposes of computing the amount of retirement benefit—something Civil Service Retirement System participants are allowed to do. This reform would not only bring equity to all federal employees participating in the two retirement plans. It also would help reduce the inevitable absenteeism that results from the current "use it or lose it" policy for sick leave under the FERS program.

Our amendment also provides relief to approximately 170 U.S. Secret Service agents and officers who have lost out on tens of thousands of dollars in retirement benefits because they did not receive what they were promised when hired. This provision would restore this group of agents and officers to the retirement system they were promised and paid into over 22 years ago.

Historically, Secret Service nonuniformed agents, like other federal employees, joined the Federal Civil Service Retirement System, whereas uniformed officers of the Secret Service were included in the District of Columbia Police and Fire Retirement Plan, because their division had originally begun as an adjunct to the DC police force. Nonuniformed agents who accrued 10 years of protection time could also transfer into the DC plan, and many did so, because when the DC plan was more generous and more flexible than the federal system.

New-hires to the Secret Service continued to be promised that they could retire under the DC Metro plan up until 1987. In that year, when the Federal Employee Retirement System was created to replace the older CSRS, the law did not permit Secret Service agents hired between the years of 1984 and 1987 to opt into the DC plan, but instead required them to be covered by the new federal retirement system.

We ask a tremendous amount from the men and women of the Secret Service, especially when they are the only ones of the federal government, who return to work have the amount of their pension offset against their salary. The purpose is to help agencies weather the upcoming wave of retirements by hiring back retirees on a limited basis.

Under present law, most annuitants who return to work have the amount of their pension offset against their salary. Congress has enacted certain limited exceptions to this general rule, and our amendment would grant all federal employees, under certain limited conditions, without offset of annuity against salary. The purpose is to help agencies weather the upcoming wave of retirements by hiring back retirees on a limited basis.

Finally, our amendment incorporates two additional bipartisan reforms of the federal pay and benefits system that our Homeland Security and Governmental Affairs Committee recently approved without dissent.

First, the amendment incorporates a bill introduced as S. 507 by Senator Alexander toward pension benefits. Senators MURKOWSKI, INOUYE, and Begich, called the "Non-Foreign Area Retirement Equity Assurance Act of 2009." This legislation will bring federal employees in Hawaii, Alaska, and other "nonforeign" areas in line with federal employees in the lower 48 states with regard to pay and pension. Federal employees in the lower 48 states receive locality pay, which is taxed and counts towards employees' pensions. Federal employees in nonforeign areas instead receive a nonforeign cost of living allowance, which is neither taxed nor counted towards pensions.

This puts nonforeign area employees at a substantial disadvantage when it comes time to retire. To correct this situation, the legislation would move federal employees in nonforeign areas from the nonforeign COLA system to locality pay that would both be taxed and counted towards employees' pensions. Federal employees in nonforeign areas would instead receive a nonforeign cost of living allowance, which is neither taxed nor counted towards pensions.

The bill includes several limits in-
Many of the provisions of this amendment have the very strong support of the groups representing Federal employees and managers as well. Our amendment would add back into the pending substitute amendment several of the reforms made in the Federal Retirement Improvement Act that actually were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the Federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I should state here for the record that the committee now has very broad jurisdiction which has been added to, in recent years, when we became the Homeland Security Committee, but in the original governmental affairs jurisdiction of the committee we not only have general oversight of the activities of government, of the Federal Government, for which the committee is responsible for the civil service, for those who work every day to enable our Federal Government to work for the citizens of our country.

I have a complete written summary of the provisions that are in this amendment. I will offer it a little bit later, but now I want to focus on a few of the most significant changes.

One of the most important reforms in the amendment would lift retirement penalties now experienced by long-time Federal employees under the Civil Service Retirement System when they want to switch to part-time work at the end of their careers. It is very important, as we face a time of increasing retirement from Federal service and increasing demand on Federal service.

The amount of an employee’s annuity is based in part on the highest rate of salary an employee received over a 3-year period. Although an employee’s salary does increase, its highest rate is calculated at the end of an employee’s career, employees count on that end-of-career work period to determine the amount of annuity they will live on in retirement. However, as the law now stands, employees who have a substantial period of service before April 1986, and who now switch to part-time work at the end of their career, get part of their annuity determined on the basis of the amount of salary received, which, for part-time work, is only a fraction of the rate of salary received.

With retirement credit for part-time work so reduced, a lot of employees have very little incentive to stay on part time when we need them to do so, and they will, therefore, retire altogether.

Our amendment would fix this problem by using the rate of salary, not the amount of salary, for determining the entire amount of the employee’s annuity. That would remove the disincentive to continue to serve that now exists.

A second provision in our amendment would correct an injustice in calculating the retirement dates and benefits for nonjudicial employees of the D.C. courts, the Court Services and Offender Supervision Agency, and D.C. Public Defender Service. These are fair and just corrections.

Another significant provision in the amendment would equalize the treatment of participants in the Civil Service Retirement System with treatment of participants in the newer Federal Employees Retirement System. To the average Federal employee, the amount of salary is probably not too comprehensible. To the millions of Federal employees, the difference between the CSRS and FERS is quite well understood and significant.

The provision that we have in this amendment would allow for its participants to apply their unused sick leave in determining their length of service for the purposes of computing the amount of retirement benefits—something Civil Service Retirement System participants are already allowed to do. That is an inequity this amendment would eliminate.

The amendment also provides relief to approximately 170 U.S. Secret Service agents and officers who have lost out on tens of thousands of dollars in retirement, or who did not receive what they were promised when hired. This provision would restore this small group of agents and officers to the retirement system that they were promised and paid into over their careers, or in some cases, not at all.

One individual for the entirety of their career, when we are taking special staffing gaps and needs and not intended purpose, which is to fill particular staffing gaps and needs and not used to frustrate the desire of a new generation of Federal workers to come in. A reemployed individual may not work more than a maximum of 520 hours, 65 days, in the first 6 months after retirement or more than 1,040 hours, 130 days, in any 12-month period or exceed a total of 390 days for any one individual for the entirety of their retirement.

Each of these proposals that are part of this amendment will help Federal employees fairly. They correct inequities; in some cases, oversights. The fact is, in many countries of the world, developed countries particularly, one of the most respected professions, lines of work one can go into is civil service, what we call the civil service. We are not where we should be in this country. These are the people who make the Federal Government work. We should treat them fairly and, in this unique circumstance, when we are taking some employees out as a change in the Federal retirement system to offset the loss of excise taxes on tobacco, there is some money left over which we can use to correct these inequities on Federal employees. That is why I am so pleased this is a bipartisan amendment.

I hope, when it comes to a vote, it will receive overwhelming bipartisan support.

I thank Senator AKAKA, who is an extraordinary Senator in general but has been a wonderful, productive, contributing member of this committee and a great advocate for the most progressive
human capital management; that is, the best management of our Federal workforce.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii, Mr. AKAKA. Madam President, I ask unanimous consent to speak as in morning business for 10 minutes.

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

Madam President, I thank Chairman LIEBERMAN for his leadership. He has been doing a grand job in moving legislation on issues of homeland security. I rise today to support the Family Smoking Prevention and Tobacco Control Act. Tobacco products kill approximately 400,000 people each year. The FDA must be provided with the authority to regulate deadly tobacco products, limit advertising, and further restrict children's access to tobacco.

I commend my friend from Massachusetts, Senator KENNEDY, for his long-term commitment to advancing this vital public health legislation, and I thank my friend from Connecticut, Senator Lieberman, for managing this bill. I am proud to support their efforts.

Included in the bill are a number of Federal retirement provisions that go a long way to support retirement security and provide more options for Federal employees.

The provisions in the managers' amendment would make four changes to enhance the Thrift Savings Plan. Federal employees would be automatically enrolled in the TSP with the option of opting out of the program. Federal employees also will be eligible for immediate matching TSP contributions from their employing agency. In addition, the Thrift Savings Board will have the option to create a mutual fund window during which employees will be able to select mutual funds that are appropriate for their investment needs. Finally, employees will be allowed to invest in a Roth IRA through the TSP.

As chairman of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, I also am proud to support my other good friend from Connecticut, Senator Lieberman, in offering an amendment to support additional retirement security and equity provisions for the Federal workforce.

Most important to my home State of Hawaii, the amendment provides needed reform to Federal employee benefits in Hawaii, Alaska, and the territories. Nearly 20,000 Federal employees in Hawaii, Alaska, and the territories, currently receive a cost of living adjustment which is not taxed and does not count for retirement purposes.

Because of this, workers in these areas retire with significantly lower annuities than their counterparts in the 48 States and DC.

Congress is scheduled to go down later this year along with the pay of these nearly 50,000 Federal employees if we do not provide this fix.

In 2007, the Office of Personnel Management offered a proposal to correct this retirement inequity. After soliciting input from all affected employees, I introduced the Non-Foreign Area Retirement Equity Assurance Act. The bill passed the Senate by unanimous consent. Unfortunately, the House did not have time to consider the bill before adjournment.

I reintroduced this as S. 507, which is included in this amendment, with Senators MUKROVSKY, INOUYE, and BEOICH. It is nearly identical to the bill that passed the Senate last year.

This is a bipartisan effort to transition employees in Hawaii, Alaska, and the territories to the same locality pay system used in the rest of the United States, while protecting employees' take-home pay in the process. In this current economic climate we must be careful not to reduce employees' pay.

The measure passed unanimously through committee on April 1. OPM recently sent me a letter asking for prompt, favorable action on this measure.

This is one of the most important issues facing Federal workers in Hawaii, Alaska, and the territories. I urge my colleagues to support this change.

One of the other provisions in the amendment corrects how employees' annuities are calculated for part-time service under the Civil Service Retirement System. This provision treats Federal employees under FERS the same way they are treated under the new Federal Employee Retirement System. Eliminating this unnecessary disparity is a matter of fairness and correction.

Similarly, this amendment includes a provision to treat unused sick leave the same way they are treated under the old system.

The Congressional Research Service recently found that FERS employees within 2 years of retirement eligibility used 25 percent more sick leave than CSRS employees within 2 years of retirement. OPM also found that the disparity in sick leave usage costs the Federal Government approximately $68 million in productivity each year.

This solution was proposed by Federal managers who wanted additional tools to build a more efficient and productive workplace and to provide employees with an incentive Congress should have included in the retirement system. This amendment also will make good on the recruitment promise made to a small group of Secret Service agents. Approximately 180 Secret Service officers, hired between 1984 through 1986, were promised access to the DC retirement plan. This amendment would provide it.

The majority of these retirement reform provisions have the endorsement of all the major Federal employee groups including: the American Federation of Government Employees, the National Treasury Employees Union, the National Active and Retired Federal Employee Association, the Senior Executives Association, the Federal Managers Association, the Government Managers Coalition, and the list goes on.

I strongly encourage my colleagues to support this bill and the Federal retirement reform provisions.

I thank Chairman LIEBERMAN for his support and his leadership.

I suggest the absence of a quorum. The ACTING PRESIDENT pro tempore. The clerk will call the roll. The legislative clerk proceeded to call the roll.

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

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

Mrs. HAGAN. Madam President, I ask unanimous consent to speak in morning business.

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

Mrs. HAGAN. Thank you.

Madam President, I rise in opposition to the Family Smoking Prevention and Tobacco Control Act that is before us. While the bill purports to reduce smoking among teenagers and to regulate tobacco products, it goes far beyond these two goals.

This broad, sweeping legislation will further devastate the economy of North Carolina and many of my constituents. In my State, we have 12,000 tobacco farmers and 65,700 jobs tied to this industry. It also generates close to $600 million annually in farm income. And the economic impact of tobacco in North Carolina is $7 billion. We know we are in the midst of an economic crisis, and the bill before us today will further impact the economy in North Carolina by putting thousands of people out of work and exacerbating the already high levels of unemployment throughout our State.

Many aspects of the bill will make it impossible for tobacco manufacturers to earn a living. For example, the labeling requirements in the bill will present a burdensome and costly obstacle for many of the smaller tobacco manufacturers, as will the marketing and advertising restrictions in this bill.

But I am also concerned that the bill will allow the FDA to develop standards for tobacco products for which technology now may not exist. For example, the bill requires the FDA to establish standards for the reduction or elimination of certain components, including smoke components. The problem is that many of these components are naturally found in the tobacco leaf and technology may not be available to extract these natural—they are not artificial—components. Allowing the FDA to develop unattainable standards will put farmers in an outright impossible position—again, hurting generations of farmers and businesses in North Carolina.

But let me make it clear that the bill is going to make it more difficult for
domestic tobacco manufacturers to compete with foreign tobacco manufacturers who are not going to be forced by the FDA to abide by the same standards as our domestic manufacturers.

For example, the bill requires that tobacco products be tested. I want to offer an amendment that is going to require that this testing be done in a laboratory in the United States because it is hard to fathom that the FDA is going to be allowed to foreign manufacturing facilities.

I believe we need to be cognizant of the burdens these new standards will impose on our domestic tobacco manufacturers in terms of greater costs to implement the reporting, testing, and labeling requirements. And we have to ensure that these costs are not going to put our domestic manufacturers at a total disadvantage with foreign competitors.

The bottom line is that in North Carolina, people are working hard to make a living. In the tobacco industry, and 12,000 work on our wonderful tobacco farms. In this economic downturn, I do not think now is the time to pass a bill that is going to disproportionately impact so many people in my State.

I have three amendments I wish to discuss at this point. I understand the majority leader is working on an agreement with the Republican leader so that these amendments will be called up at a later date.

The first amendment I wish to discuss is amendment No. 1249, requiring that the technology exist before the FDA can develop standards. This is an amendment I wish to have serious consideration given.

This amendment, No. 1249, simply clarifies that the FDA cannot establish technological standards until they have determined that the technology is available to meet that particular standard.

The bill does not limit the FDA’s authority to reduce or ban compounds found naturally in tobacco leaf. Rather, this gives the FDA the authority to require the removal of harmful components from tobacco products, including components that are native to the tobacco leaf. Because of this, many of the new requirements will only be achievable through dramatic changes in tobacco farming operations and could destroy the livelihoods of North Carolina farmers in the long term. As such, this bill allows the FDA to establish standards on tobacco products that may not be achievable with the technology that exists. While the bill does include language that would require the FDA to consider technical achievability, it does not go far enough to ensure that the technology does, in fact, exist.

My amendment would require the FDA to actually establish that the technology is available before it sets the standards. This approach is similar to the standards the EPA must meet to implement environmental laws. I believe if we are going to put 65,700 jobs on the line in North Carolina, we certainly have to ensure that the technology is available to give those people and employers and employees a chance to adhere to the FDA standards.

I urge support of this amendment.

My second amendment I wish to discuss is amendment No. 1253, disallowing the FDA regulation of the actual tobacco farmer. This amendment would clarify that the FDA does not have the authority to regulate the grower who produces tobacco, either directly or indirectly. The underlying bill does state that the FDA does not have authority over the tobacco leaf that is not in the possession of the manufacturer and that the FDA does not have the authority to enter onto a farm owned by a producer of tobacco. But the bill provides an exception to allow the FDA to regulate activities by a manufacturer that affects the actual production. This is a backdoor way of getting at the tobacco grower. Because of this, nearly every activity by the tobacco manufacturer affects the production of the tobacco leaf.

Further, the underlying bill would allow the FDA to indirectly place mandates on a tobacco producer by placing mandates on a manufacturer. It is unrealistic to expect that mandating standards on tobacco manufacturers will not trickle down to drastically impact the actual farmer and their operations. As such, the exception in this bill is too broad.

My amendment drops this exception. This amendment is critical to ensure that as new standards and regulations are imposed on tobacco manufacturers, farmers, and their families will be protected.

Again, there are 12,000 tobacco farmers in North Carolina who are on the line. Their livelihoods are on the line. We need to be sure they are able to have a playing field they can work with.

I urge support of this amendment.

Madam President, the third amendment I want to discuss is amendment No. 1232, which has to do with testing in U.S. laboratories.

This bill before us today requires foreign-grown tobacco to meet the same standards applied to domestically grown tobacco. But the problem is, the bill does not contain language suggesting that the FDA is going to enforce this. I sincerely doubt we will find any foreign tobacco manufacturers willing to invite the FDA into their companies to inspect and test their tobacco products. And I doubt we will find many foreign testing facilities that are willing to submit to U.S. standards.

My amendment addresses this concern by requiring, simply, that any testing of tobacco products required in this bill be conducted in a U.S. laboratory. Undoubtedly, the FDA is going to have a difficult time regulating products coming in from overseas. We do not have to look very far into FDA’s past to figure that out. The solution to this problem is to require tobacco products intended for domestic consumption to be, simply, tested in our country.

This requirement would help ensure that our domestic tobacco manufacturers are not put at a competitive disadvantage to foreign manufacturers, and that foreign manufacturers do not get preferential treatment because domestic manufacturers would be subject to stricter testing requirements. It would also help to ensure that foreign manufacturers are not simply dumping unsafe products into the U.S. market.

In this time of economic uncertainty, I think we have to do what we can to protect and create American jobs. Requiring tobacco products to be tested in the United States would certainly help keep those jobs here at home.

Once again, I urge support and consideration of this amendment.

Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURR. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. We are.

Mr. BURR. Mr. President, I ask unanimous consent to speak for up to 30 minutes.

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

Mr. BURR. I thank the Presiding Officer.

Mr. President, later this morning, today, we will go back on the tobacco FDA bill. As one who has tried to educate Members on why this is a flawed bill, let me state I am fighting an uphill battle. I have been all week.

I wish to thank my friends and colleagues who have come to the floor over the last days to support their belief that this is misguided, not the regulation, but the fact that we are concentrating this in the Food and Drug Administration, an agency that has the trust and confidence of the American people that the gold standard of proving safety and efficacy for all drugs, devices, biologics, and cosmetics, and food, is the FDA. I urge my colleagues know this has been an uphill fight, too. I have tried over the course of those days to highlight for the American public why it is bad policy. I have highlighted portions of the bill that I thought were flawed. I haven’t come out and said this is the wrong thing, even though, let me remind my colleagues, this is the current flowchart for the Federal regulation of tobacco before we do anything. So for Members who come and say this industry is underregulated, remind them it is the Department of Transportation, the Department of the Treasury, the Department of Commerce, the
Department of Justice, the Office of the President, the Department of Health and Human Services, the Department of Education, the Department of Labor, General Services Administration, the Department of Veterans Affairs, the Federal Trade Commission, the Consumer Product Safety Commission, the Office of Consumer Affairs, the Department of Agriculture, Environmental Protection, U.S. Postal, and the Department of Defense. Now we are going to take all of those areas of Federal regulation and we are going to condense them all into the Food and Drug Administration, which has a mission statement of proving the safety and efficacy of every product over which they have jurisdiction.

Twenty-five percent of the U.S. economy is currently regulated by the Food and Drug Administration. Americans go to bed at night after taking pills prescribed by a doctor and filled by a pharmacist with the comfort of knowing they have been approved to be safe and effective. Through this bill we are going to dump on the Food and Drug Administration a product that is not safe and it is certainly not effective.

I have tried to point out the flaws. Heck, I have tried to point out the good in the bill. I have tried to make a one-sided case. But every time one of my colleagues from the other side of the aisle has come to speak, we have either seen charts that are 10 years old or data that is 10 years old. We have seen charts that they have re-used in a light that didn't even exist 10 years ago. I have haven't heard a single question I have asked in this debate answered by the other side or even their opinion of what is wrong with the substitute. It has all been rhetoric.

I wish to share a story with my colleagues. This story is a news report. It was a report CNN ran on a product that is new in the market. It is called Camel Orbs. It is not a cigarette, and it is really not smokeless tobacco; it is a dissolvable tobacco substitute. It has all been rhetoric.

As I pointed out to my colleagues yesterday when I showed them the chart for continuum of risk, non-filtered cigarettes have a 100-percent risk factor and filtered cigarettes have a 95-percent risk factor. As you introduce new products into the marketplace that allow individuals to move from cigarettes to other products, you reduce the risk. You reduce the risk of death and disease, and that is one of the reasons why tobacco abatement is important. Youth usage should go down. Death and disease should be reduced from the standpoint of risk.

Let me come all the way over here on the chart to dissolvable tobacco. The risk is 2 percent. To bring it crossed over to market is to reduce the risk from 100 percent to 2 percent—98 percent better.

CNN ran this article on Orbs. It is a smokeless product, but I will get into that in a few minutes. For now, what you may not know about Orbs is they are under the same age restrictions all tobacco products do. That means it contains no cartoon images. It must be shelved behind the counter where it is out of reach of children. Heck, it is out of reach of adults. They have to physically ask for the product. By the way, you must show photo ID to buy tobacco products today. Let me say that again. You must show a photo ID to purchase tobacco products.

When CNN did their story, they made a mistake. They labeled it as candy—even though it is not candy flavored. They said it was candy and they didn't mention death or disease. You would think a story on tobacco would lead with that. I haven't been shy to come to the floor and say that is the result of tobacco usage. But they didn't even go to death and disease. No, they said it was candy. That is how they labeled it.

Even though they mischaracterized the product and people down the path they wanted to go, that wasn't the bad news of this story. The bad part of the story was they took tins of Orbs and placed them in the candy aisle at the convenience store, right there beside the Reese's Cups and the chewing gum. Then they took footage of a young boy, and I think, reaching over and picking up one of the tins. I was horrified. Although this is highly illegal. Even though the convenience store could be prosecuted, and therefore they don't put tobacco products in the candy section, still CNN wanted to make their point. What is more effective than to stage what the picture was. Let me say that again. What a better way to make the point than to stage that every retailer in the world out there is putting Orbs, a tobacco product, in its candy section. They portrayed Reynolds America as being deceptive and luring children. No candy. It is not going in the candy section. It is in the tobacco section where smokeless and stick smoke products are.

That is how it's so difficult. That is why the job I am on a quest for is an uphill battle. It is because nobody on that side wants to come down and talk about the policy.

The bill we are considering was written 10 years ago. No wonder we are using 10-year-old charts and 16-year-old statistics. The truth is, if you look at the statistics today, if you want to address death and disease, then accept the fact that there has to be an opportunity to reduce it. That is what my colleagues need to know is that H.R. 1256 gives the FDA full jurisdiction over tobacco products, and it takes this category right here and it locks it in. It cements it because it gives them the authority to use the concept of smoking prevalence as a marketing tool. Under H.R. 1256, which is the base bill, the sponsors claim that the FDA will stop everything, that all of this will go away. And let me concede for a minute that maybe they are right, then they would have to concede that I think it is foolish and illegal to lock this product in forever. If you lock that product in forever, then you can't make the claim that you are reducing death and disease.

I think, as I have gone through this debate and pointed out that when you look at the CDC study of 50 States and you look at the percentage of smoking prevalence in our youth, what you find is that in 48 States out of 50, the prevalence of marijuana usage is higher than the prevalence of smoking. Let me say that again. In 48 out of the 50 States, the prevalence of marijuana use is higher than the prevalence of smoking. One would conclude from that, since marijuana is illegal—it is not age-tested—you cannot communicate with the American people aren't that foolish. They realize nothing goes to zero. But they also realize it is foolish to suggest that if you concentrate to reduce the prevalence of smoking, the smoking prevalence is going to go below that of marijuana because marijuana is illegal.
The fact is, putting tobacco regulation at the FDA is not going to have any impact on youth usage. What is going to have an impact on it? Actually taking the master settlement dollars from 1998, the $280 billion the tobacco industry committed to tobacco in the States, all 50 of them, for two things: one, to defray their health care costs, and two, to fund the programs of cessation to get people to quit smoking and fund the programs to make sure children if we wake it up, that is, I pointed out, we have some States that, when the CDC annually makes its recommendations, spend as little as 3.7 percent of what the CDC told them they needed to spend of this tobacco money to make sure kids got an educational message: “Do not smoke. It kills.” Now we are blaming it on the fact that they are not regulated enough today and that we can concentrate this under one Federal agency, the Food and Drug Administration, and that maybe that, mythical that, that happens, youth prevalence of smoking is going to go down. No. It is going to go down when States take the money the tobacco industry gave them and they actually use it to reduce the youth smoking; like sure they take up tobacco products, to make sure people switch from smoking products to some other form that has a better effect on death or disease.

I would love to say that my State of Connecticut had 100 percent of what the CDC recommends to use on cessation and youth education, but we only spend 17.3 percent of what the CDC recommended of the money we got. When you look at all of the States, though, 17 percent is pretty good. I don’t know whether it was used in other States for sidewalks or for greenways. I know one thing for certain: It didn’t go to try to educate young people in this country not to use tobacco products, if we want to get that youth usage down, then we have to use the tools we know work: that is, education.

I have listened to my colleagues come to the floor for weeks and make unbelievable statements. All of this has followed the same conclusion: FDA will stop all of this and FDA will put the evil tobacco out of the hands of kids. I think I have made a pretty good case that it is not going to happen, not with this legislation. The sad reality is, my friend, if we pass a law that does all that, that is why Senator HAGAN and I have offered a substitute. That substitute will be debated over the first half of this afternoon, and every Member will have an opportunity before the afternoon is over to vote on that substitute.

I encourage all Democrats, Republicans, and Independents to read the bill. You will find that it provides all the regulation in H.R. 1256, and more. The basic bill limits print advertising to black-and-white ads. What does our substitute do? It eliminates print advertising. That magazine that mom buys that a 14- or 16-year-old daughter may like to look at in the afternoon—under our substitute, they cannot advertise there anymore. Under H.R. 1256, they are allowed to advertise, but in black and white. In some way, they believe kids cannot read in black and white, those can only breathe in color. That is absurd. I don’t want you to know more about how misguided the legislation is. It is not solving the problems—death, disease, and usage. The tools are in place. We can reinforce them in a more effective way. That is what the substitute accomplishes.

My friend from Connecticut yesterday stated that I was misguided in my belief that the FDA was not the right agency to regulate tobacco. He said the FDA was the only agency in America that had the scientific expertise to do the job. I only have one question: Does the FDA have the expertise to make tobacco safe? Again, does it have the expertise to make tobacco safe? I think the answer is, no, it doesn’t. Therefore, it does not have the authority or the expertise to make tobacco safe? Again, does it have the authority or the expertise to make tobacco safe? I think the answer is, no, it doesn’t. Therefore, it does not have the authority to make tobacco safe? Again, does it have the authority to make tobacco safe? I think the answer is, no, it doesn’t. Therefore, it does not have the authority.

But I will make the pledge to him today that if he will offer an amendment to outlaw any packaging that looks like a cell phone, I will cosponsor it with him. If he were right, I think every manufacturer of anything in the United States would make it look like a cell phone today, if it were that effective.

My friend went on to call Camel Orbs dangerous. He had no scientific basis for that claim. He quoted an 8-year-old Surgeon General warning on smokeless tobacco that said it caused cancer, but the last time I checked, Camel Orbs didn’t exist back then. He said that I called harm reduction products, such as Camel Orbs, safe. I have been on the floor 4 days, and I spoke for 2 hours 37 minutes yesterday. I might have slipped, but I don’t believe I have ever referred to any tobacco product as “safe.” If I did, let me retract it. I don’t want it, let me assure you. But I will make the pledge to him today that if he will offer an amendment to outlaw any packaging that looks like a cell phone, I will cosponsor it with him. If he were right, I think every manufacturer of anything in the United States would make it look like a cell phone today, if it were that effective.

I listened to my friend from Oregon speak for 2 hours 37 minutes yesterday. He repeatedly called it candy, also, even though you cannot buy it unless you are 18, and it cannot be put in the candy section—unless you are CNN and you are doing a story. He said the packaging was intentionally shaped like a cell phone to attract kids. If a cell phone doesn’t work, children don’t want it. Let me assure you. But I will make the pledge to him today that if he will offer an amendment to outlaw any packaging that looks like a cell phone, I will cosponsor it with him. If he were right, I think every manufacturer of anything in the United States would make it look like a cell phone today, if it were that effective.

I don’t think tobacco is safe, but I do believe there are products that are safer than smoking. I believe that for adults who choose to use tobacco products, they should have every option available to make sure that that product is something they can access. Compared to smoking, they do reduce death and disease.
Camel Orbs and Sticks represent a 99 percent reduction in death and disease associated with tobacco use compared to cigarettes. They don’t cause lung cancer, cardiovascular disease, emphysema, or COPD.

The American Association of Public Health Physicians states that those Orbs are the most effective way to fight death and disease associated with current tobacco users. Yes, much to my amazement, the American Association of Public Health Physicians came out and endorsed the substitute amendment to H.R. 1256. Again, yesterday, the Association of Public Health Physicians endorsed the substitute amendment to this bill.

Unlike my friend from Oregon, I have the science to back up my claim. I have the studies from Sweden, and I have looked at the documented evidence. Alternative tobacco products work in harm reduction. I will tell you what doesn’t work—current cessation programs, especially the ones that are not funded. That money that was supplied to the States. The current cessation programs don’t work; they have a 95 percent failure rate. So 95 percent of the people return to smoking.

Why in the world would we continue to support the pathway for reducing death and disease? Why wouldn’t we acknowledge the science that currently exists and accept, in new policy, a policy that would in fact embrace the substitute amendment to this bill.

May I inquire how much time I have left?

Mr. BURR. Senators come to the floor and speak about the $13 billion in marketing the tobacco industry spends. They fail to tell you that 95 percent of that money goes to retailers and coupons against the competition and to make them more attractively priced at retail. Only 3 percent actually go to advertising in adult venues and point of sale displays. That doesn’t make it a good point.

What makes it a good point is that the tobacco industry spends a tremendous amount of money making sure that their industry is protected for the people who choose to use it and are of legal age.

Last year, we taxed the tobacco industry to fund the children’s health insurance program. There is a proposal on the floor to tax them to pay for a universal health care. Senator DODD admitted yesterday that the industry would be taxed to pay for this bill.

But that is not a good story. A good story is placing tobacco products in the candy aisle by a news organization just to make a point and then portray to the American people that these are the tactics of the tobacco industry. I have, over 4 days now, come to the floor not to defend the tobacco industry. I am here to defend the FDA, because I don’t believe the American people deserve to be discredited under their jurisdiction and asking them to do something they have never, ever done.

When I showed the flow chart of jurisdictions, the one missing out of the current regulatory architecture for tobacco is the FDA. Nobody can claim to have seen this before and, therefore, this is an appropriate thing to do again. Simply, I have come to the floor in the last 4 days to debate the policy. At the end of the day, I hope Members of the Senate will weigh the policy, the points that I have made, the evidence. I have brought to the table, and if, at the end of the day, what you are attempting to do is reduce death and disease, reduce youth usage, I hope I have made the case to you that you should not pass H.R. 1256.

This afternoon, before there is an opportunity to vote, I hope to make the case that you should support the Hagan-Burr substitute. I hope I have made the case to most that even if the chairman of H.R. 1256 or nothing, that the CDC report says if you want to address a reduction in death and disease, the fastest way to get there is to do nothing if, in fact, your only choice is to pass H.R. 1256.

Once again, look at my colleagues for their patience as I come to the floor to try to educate and provide facts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, first, I will address the issue pending on the floor of the Senate, which is the issue of whether we are going to have the FDA regulate tobacco.

The FDA, historically, focuses on the obvious—food and drugs. Over the years, we have expected from them that they would do their job and make sure, as much as humanly possible, that American consumers would not be exposed to dangerous food products or dangerous drugs and medicine. Sometimes they have failed us, but most of the time they do the job pretty well.

The way they do their job, when it comes to food, is pretty obvious when you go to the grocery store. A consumer buying a pound of spaghetti can grab it, read the label and find out the contents, including a nutrition square that talks about carbohydrates, fat, and calories, which people are concerned about before making choices.

When it comes to medicines and drugs, the Food and Drug Administration goes a step further. They require that products that are sold in the United States be both safe and effective. If you are going to sell a drug that is supposed to cure your illnesses, the Food and Drug Administration wants it tested to make sure it does not hurt you, No. 1, and, No. 2, that it does what it is supposed to do.

So over the years, for almost 100 years, the Food and Drug Administration has created a safety net for American consumers so that the things we purchase, at least by that agency and a few other Federal agencies, have some review before the consumer purchases it.

Then along comes tobacco, and the tobacco industry has argued for as long as this issue has been going on that they should not be covered by the Food and Drug Administration. They say: We are just tobacco leaves that are ground up, put in a little paper cylinder that people enjoy smoking or maybe chewing. That is all it is about.

For the longest time, they were exempt from the Food and Drug Administration asking the most basic questions. For example: What is in your product? If you believe it is just tobacco leaves for use as food, you would be correct. But that is not a good story. A good story is that tobacco companies learned a long time ago that if they added chemicals to the cigarettes, they could get more consumer satisfaction, more consumer use, and more people buying more of their product.

What did they add? They learned a long time ago that the tricky part of tobacco is nicotine. Nicotine is a drug naturally occurring in tobacco which, if you smoke it, it starts to crave it, and with that craving and that demand of your body each day for more and more of the chemical, you smoke more and more. Nicotine, craving, leading to an addiction.

I don’t use that word lightly. I have seen people who are addicted to tobacco products—virtually all of us have—folks who just cannot quit. They try everything—hypnosis, patches, lectures, you name it—and they cannot quit. They crave that nicotine chemical.

The tobacco companies learned a long time ago that if they added more nicotine to those tobacco leaves than naturally comes out of them, the people get more addicted. It makes it more difficult for them to quit. So they started piling more nicotine into the cigarette. But that was not the end of it.

They also said: The first time a kid or somebody picks up a cigarette and takes a big drag of it, often they cough because their body is saying: What are you doing to me? Are you jamming that smoke into my lungs? That doesn’t belong there. They found other chemicals that they could add to cigarettes which would reduce the body’s rejection and would make it more pleasant to the taste, and so they pumped those chemicals in as well. Then came a whole soup of chemicals that they added for any number of reasons.

Obviously, when you buy a pack of cigarettes, if you want to know what is in the cigarette and take a look at the

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So over the years, for almost 100 years, the Food and Drug Administration has created a safety net for American consumers so that the things we purchase, at least by that agency and a few other Federal agencies, have some review before the consumer purchases it.
package, you will find there is no disclosure whatsoever. None. You don’t know what is in there. All you know is this is paper and tobacco to start with, but you don’t have a clue that there is more nicotine or other chemicals added. And you certainly don’t have a warning on the package that some of the chemicals they stick in cigarettes literally cause cancer. It isn’t bad enough that burning tobacco and inhaling the smoke can cause cancer, there are other chemicals that are carcino-
genic added by tobacco companies be-
cause they think it makes a more pleasant product.

The obvious thing the American con-
sumer would say is: Where is the Food and Drug Administration warning? Why won’t they tell us the ingredients on that tobacco package? Why won’t they tell us if they are dangerous? Be-
cause they do not have the legal au-
thority to do it.

From the beginning of time, with the tobacco lobby being one of the most powerful in Washington, they made sure the Food and Drug Administration had no authority when it came to this product. None.

Who does regulate tobacco in the United States? The answer is not any-
one; no agency does. The only real reg-
ulation has come out of court cases where the tobacco companies were fined or where injured smokers sued the tobacco companies because of things such as misrepresentations—light to-
bacco, low-tar tobacco, safer ciga-
rettes. People take them to court and say that is misleading and deceptive. They have won cases, and they have had to disclose more information over the years.

Today we are trying to do something that the tobacco companies’ lobby has been fighting for decades. We are try-
ing to give the authority to the Food and Drug Administra-
tion to take over the responsibility of mak-
ing sure that American con-
sumers are at least informed about to-
bacco products so they know what is in

The advertising has a lot to do with it, but so does human nature. My wife and I raised three kids. We have seen a lot of kids being raised. I even have vague memories of my youth. The first thing you are attracted to is what your parents say you should not touch. Don’t you dare touch that pack of to-
bacco. Don’t you dare smoke a ciga-
rette. Can’t wait to try it, right? Get out behind the garage with your cous-
in, the way I did when I was 10 or 11 and I would steal a cigarette.

Man, that shows I am independent, I am grown up, I make up my own mind. Kids will do this. I wish they did not. I

About 20 years ago, I decided as a Member of the House of Representa-
tives that I was going to do something about it. The first thing I did was to tackle the tobacco lobby on one little tiny issue: banning smoking on air-
planes. Hard as it may be for younger people to believe, the time when we had what we called smoking and nonsmoking sections on airplanes. Can you believe that? We are all sitting in the same metal tube flying across the world or around the country, and we are somehow of a mind that if I sit in row 1 through 18 in the nonsmoking section that I will not be bothered by

several seconds until you say that is misleading and deceptive. It never made sense and caused a lot of problems, health and otherwise. So 20 years ago, we banned smoking in airplanes. I did it in the House. Sen-
ator FRANK LAUTENBERG of New Jersey did it in the Senate. It became the law of the land and eventually all flights became smoke free.

I do not want to take more credit

The tobacco companies know to

This bill says we have to stop it. So not only do we give the Food and Drug Administra-
tion authority to tell us the ingredients in the package, we give them the authority to police how people sell tobacco products in America.

And I will tell each of you and other senators that they start peddling these tobacco products with

We have 1,000 organizations, literally

We have 1,000 organizations, literally

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States that have endorsed this bill. I have literally in my time in Congress, 27 years, never seen a bill with this kind of endorsement. People understand this now. They understand we have to do this now. Senator Kennedy, who is our champion and inspiration, cannot be here today. He is battling a brain tumor and doing well, but he cannot make it to the floor. But I will tell you that he is in our hearts, thoughts, and prayers today. This bill is about what he would have wanted to see.

There are a lot of problems with it. I have heard the Senators from North Carolina virtually exempts smokeless tobacco products from regulation, which means they can be harmfree for every body—and that means any cancer-causing agents they contain.

My colleague’s substitute gives the agency far less authority to remove harmful constituents in cigarettes than the Kennedy bill does, and it makes it far more difficult for the agency to act.

The Burr substitute gives the FDA to fully remove harmful constituents.

The Burr proposal allows only the reduction—but not the elimination—of known harmful substances.

The Kennedy bill allows the FDA to take into account the impact of product changes on potential users—including children—and the effects on former smokers who might be enticed to resume the nicotine addiction.

The Burr substitute allows the agency to consider only the narrow health impact on existing smokers.

The Kennedy bill allows the FDA to reduce or fully eliminate substances that may be harmful using the best available scientific evidence.

The Burr substitute requires the agency to demonstrate that a single product change is likely to result in “measurable and substantial reduction in morbidity.” This standard would be extraordinarily difficult to meet given the large number of harmful substances in cigarettes. It is language that will tie the agency in knots and prevent actions that are clearly in the interests of public health.

The Kennedy bill includes an outright ban on candy and fruit-flavored cigarettes.

The Burr alternative bans only the use of candy and fruit names on the product packages, while allowing the use of candy and fruit flavors to entice young people to begin using products laced with nicotine and carcinogens.

All these details are important—they mark the difference between an approach that gives the government real authority to regulate the contents of tobacco products, and an approach that bows down to the industry and leaves tobacco companies in charge of these decisions.

We shouldn't continue to give those companies that kind of power.

There is another serious problem with the substitute offered by the Senator from North Carolina. It does not adequately protect consumers from misleading health claims about tobacco products.

The Kennedy bill sets stringent but reasonable scientific standards before manufacturers of cigarettes and smokeless tobacco products are allowed to claim that their products are safer or reduce the risk of disease.

The Burr substitute completely exempts smokeless tobacco products from these standards even if those
claims are likely to cause youth to take up tobacco for the first time.

When smokeless tobacco manufacturers aggressively marketed their products to young people in the 1970s, often with themes suggesting that they were less harmful than cigarettes, use of those products increased among adolescents.

The Burr substitute only allows the agency to look at the impact of health claims on individual users of tobacco products.

It does not allow the agency to consider whether the reduced risk claim would increase the harm to overall public health by increasing the number of youth who begin using tobacco products or reducing the number of current users who quit.

The Senator from North Carolina has criticized the Kennedy bill for limiting tobacco advertising to black-and-white text-only material in publications with significant tobacco advertising.

His substitute, he says, goes further by banning tobacco advertising.

That is an attractive talking point. But like so much tobacco advertising, it is misleading. It has a barbed hook buried in it.

The fact is, a broad, indiscriminate ban on tobacco advertising would likely be struck down by the courts. The courts would probably rule that it is an impermissibly broad limitation on speech.

They would say the ends are not sufficiently tailored to the means, and they would conclude that it violates the First Amendment.

That is what constitutional scholars tell us.

The result of the Senator’s amendment would be a continuation of current law—a continuation of the insidious advertising the industry currently uses to lure new customers. Under the guise of a total advertising ban, he would give us the status quo.

And the tobacco industry would thank him for it.

My colleague from North Carolina has improved the warning labels he would require on cigarettes. But they would not be strong enough.

The Burr substitute would allocate 25 percent of the bottom front of the package to a warning label.

In contrast, the Kennedy bill reflects the latest science on warning labels by requiring text and graphic warning labels that cover 50 percent of the front and back of the package.

Clearly, a health warning that takes up the top half of the front and back of a package will be more noticeable and easier to read than one that takes up only a quarter of the bottom of the package—a claim that may be hidden by the sales rack.

Senator KENNEDY’s bill also gives the FDA the authority to change the warnings in light of emerging science. Under the Burr substitute, the agency would not have any authority to change the warning labels.

And the Burr amendment’s required warning labels for smokeless tobacco products read more like endorsements than warnings.

For example, one of the required statements is a warning that the product has a significantly lower risk of disease than cigarettes. That is not a health warning—it is an unhealthy promotion.

We have an historic opportunity to finally put some real and meaningful regulations in place, and that will stop some of the tobacco industry’s most egregious practices.

For decades, the industry has lied to us, and I don’t know why we would trust them now to do the right thing.

We should not accept the underlying premise of the Burr substitute, that a lifetime of addiction and a high risk of premature death must be accepted, and that our strategy should be to steer people towards “reduced harm” products.

That is the smokeless tobacco approach, not the public health approach.

The Kennedy bill is a strong and carefully crafted solution that puts the public health first.

The Kennedy bill is the bill that should be enacted.

EXTENSION OF MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that morning business be extended until 12:30 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER (Mrs. HAGAN). Is there objection?

Mr. DURBIN. Madam President, I have about 10 minutes remaining, and then I will be glad to yield to the Senator from Kentucky, who has been sitting here. I ask unanimous consent that when I conclude my remarks, the Senator from Kentucky be recognized to speak as long as she wishes.

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

GUANTANAMO

Mr. DURBIN. Madam President, if you got up early this morning—like about 6 a.m.—and turned on the television, you would have heard a historic speech. President Barack Obama is in Cairo, Egypt, this morning—our time today morning—speak before an assembled group at a university in Cairo about the relationship of the United States and Muslims around the world. It is a critically important speech.

All of us know what happened on 9/11/2001. We know our relationship with people in the Middle East has been strained at best, and we have been troubled by the threats of Islamic extremism, and so the President went and spoke in Cairo. I listened to his speech. Now, I am biased because he was my former colleague from Illinois and I think so highly of him, but I think he tried to do was to explain to them how we have developed a positive relationship between people of the Islamic faith and America, and I thought he laid out the case very well in terms of our history, our tolerance, the diversity of religious belief in our country, and how aspects of Islam—extremist elements of Islam—are not even operating in a way consistent with their own basic values and principles.

The reason I refer to that speech is that one of the points that was important was when President Obama said to this assembled group—to their applause—that the United States was going to change its policies under his leadership. He said we are not going to use torture in the future, and he received applause from this group. He said we are going to close Guantanamo, and they applauded that as well.

What the President’s statement said—and basically the reaction of the audience told us—is that regardless of our image of the United States, for some people around the world there are things that have occurred since 9/11 which have created a tension and a stress between us that need to be addressed honestly. President Obama made it clear that we are starting a new path, a new way to develop friendships and alliances around the world to stop terrorism and stop extremism, and he understands that torture—the torture of prisoners held by the United States—unfortunately created a tension between the United States and other people in the world. They know it of because of Abu Ghraib, the graphic photographs that are emblazoned in our memory, and theirs as well, of the mistreatment of prisoners in Iraq.

They know it from the photographs that have emerged and the documentary evidence about the treatment of some prisoners at Guantanamo.

It has, unfortunately, become a fact of life that Guantanamo itself is a symbol that is used by al-Qaeda—the terrorist group responsible for 9/11—to recruit new members. They inflame their passions by talking about Guantanamo and the unfair treatment of some prisoners at Guantanamo. President Obama knew this and said in his first Executive order that the United States will not engage in torture and within a year or so we will close the Guantanamo corrections facility. I think it was the right decision to keep grammamano and it was the right decision but the right decision. If we are truly going to break with the past and build new strength and alliances to protect the United States, then we have to step up with this kind of leadership.

The President inherited a recession, two wars, and over 240 prisoners in Guantanamo, some of whom have been held for 6 or 7 years. Many of these people are very dangerous individuals who should never, ever be released, at least as long as they are a threat to the safety and security of the United States or a threat to other people. Some should be tried. They can be tried for crimes
and, if convicted, they can be incarcerated. Others may be sent to another country, maybe returned to their own country of origin.

One of these prisoners I happen to know a little about because he is represented by an attorney in Chicago. He is Palestinian. He is from Gaza and was captured when he was 19 years old. He has now been held in prison for 7 years. He is now 26 years old. Last year, our government notified him and his attorney that we have no current charges against him, but we have been trying to find a place to send him. He stayed another year in prison while we are trying to determine where he should be sent.

Each of these 240 cases is a challenge to make sure we come to a just conclusion as to each person and never compromise the safety of the United States.

A little over a week ago, the President went to the National Archives and gave a speech about Guantanamo and what we are going to do, and he made it clear that some of these people will be tried in our courts, some of them may end up in prisons in the United States, some of them may end up being held stateside. The guards are concerned that some potential terrorists and a danger to the United States, and some may be sent to other countries. They are trying to work out 240 different cases. It is not an easy assignment.

The reason I raise this is because it is clear that as long as Guantanamo remains open, it is going to be an irritant to many around the world and lead to the recruitment of more people to engage in terrorism against the United States. Don't accept my conclusion on that. The Chairman of the Joint Chiefs of Staff, ADM Mike Mullen, said:

The concern I've had about Guantanamo in these wars is it has been a symbol, and one which has been a recruiting symbol for those extremists and jihadists who fight us.

On the floor of the Senate this morning, shortly after the President's speech, the Republican minority leader, Senator MCCONNELL of Kentucky—as he has many times before—came to discuss Guantanamo. He said explicitly—and he may have said this before, but I just want to make it clear that I am reading from the transcript of what he said on the floor this morning—“Like most Americans, I'm for keeping Guantanamo open.” So he clearly disagrees with the President. He wants Guantanamo to stay open. I certainly hope that it doesn't. I don't want this recruiting tool for terrorists to continue.

Senator MCCONNELL has raised the question repeatedly of whether it is safe for us to bring Guantanamo detainees to the United States for a trial or for incarceration. I think it is, based on the fact that we currently have 347 convicted terrorists serving time in American prisons today. Over half of them are international terrorists, and some of them are in my State of Illinois at the Marion Federal penitentiary. They are being held today. As I traveled around southern Illinois last week, I didn't hear one person step up and say: I am worried about the terrorists being held at the Marion prison.

In fact, I went to the Marion prison, met with the guards and asked some of the guards, and asked them this: What do you think about Guantanamo detainees? Well, they were somewhere between insulted and angry at the notion that they couldn't safely incarcerate a Guantanamo detainee. One of the guards said to me: Senator, we have more dangerous people than that in this prison. We have serial killers, we have sexual predators, we have terrorists from Colombia, we had John Gotti—the syndicate kingpin. We held these people safely, and we can do it. That is what we do for a living. So don't you worry about putting them in this prison. We can take care of them. We have not had an escape, and we are not going to.

So when Senators come to the floor and suggest that these detainees cannot even be brought to the United States for trial and held in a prison while they are going to trial, that it is somehow unsafe to America, defies logic and experience. If there is one strength we have in this country—and you can debate it—we know how to incarcerate people. We have put more people in prison per capita than any nation on the Earth. How dangerous are they? We are proud of the institutions of America where they are living proof that is not true. The 347 convicted terrorists being held in America today are living proof that is not true.

This tactic of opposing the closing of Guantanamo is based on fear—fear that is being pedaled on this Senate floor that these prisoners cannot be held safely and securely in the United States. It is the same fear that led people to conclude that our Constitution wasn't strong enough to deal with a war on terrorism, and therefore we had to go. This is the same fear that led people to conclude that our courts can't handle cases of terrorism, that these people would be lost many times over. It is the same fear that our law enforcement authorities can't do their job effectively, when, in fact, they can.

We cannot as a nation be guided by fear. And those politicians who come up and make speeches, whether it is on radio or television or on the floor of Congress, and who try to appeal to the fear of the American people aren't doing us any favor. We are not a strong nation cowering in fear. We are a strong nation, and we have done that many times over. It is the same fear that our law enforcement authorities can't do their job effectively, when, in fact, they can.

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And I yield the floor.
farmers are the ones who are going to pay the price.

Not once in this bill did I read any language that would provide any type of protection to our tobacco farmers—not even once. This is why I have introduced the four amendments, which I will give you their numbers: 1230, 1237, 1238, and 1239.

If the FDA is going to regulate tobacco and require sweeping changes within the industry, I want to ensure that the small farmers have a voice at the negotiating table. My amendments do this. Not only do they allow for fair grower representation, but they help ensure that those who will be most affected by this legislation will not be forced to pay the biggest price.

Let me be clear that I oppose the FDA regulation of tobacco. I have said that as long as tobacco is a legal commodity, it should be regulated through the USDA, the United States Department of Agriculture, not the FDA. If we are going to discuss giving the FDA this authority through this or similar legislation, I want to make sure that we consider the impact on agriculture.

In Kentucky, the family farm is the foundation for who we are as a State. For over a century, the family farm in Kentucky has centered around one crop—tobacco. Tobacco barns and small plots of tobacco dot the Kentucky landscape. We are proud of our heritage and proud that tobacco plays a role in our history. Even after the buy-out, tobacco still plays a prominent role in my State’s agricultural landscape.

We have tried to broaden our agricultural base. We have had some success with several types of vegetables, cattle, and even raising catfish. But at the end of the day, nothing brings as much of a return to the small farmer in Kentucky as tobacco. It is big business for small farmers.

With the current economic conditions, more and more farmers in my State are turning to growing tobacco to supplement their income or, in a lot of cases, tobacco is their sole source of income. The money they get from tobacco pays their mortgages, puts their kids through school, and actually allows them to stay on the farm.

Outside of the western part of my State, Kentucky does not have tens of thousands of acres of flat land. We have a lot of hills and hilly terrain where tobacco thrives. It can be raised very cheaply on small plots of land that simply cannot accommodate other crops. Whether we like it or not, tobacco remains an economic staple for rural Kentucky. It is profitable and farmers rely on it. That might not be popular today, but it is an economic reality that we have to face.

Whatever the opponents of tobacco say, there is no denying that this bill will add unnecessary mandates and expenses on the farmers in the attempt to punish the big tobacco companies. Sure, this bill will hurt big tobacco companies. They might have to start exporting more of their products. But they will survive. But Kentucky’s tobacco farmers do not have these options available to them. They are the ones who are going to be hurt by this type of legislation.

Some of my colleagues might support this legislation because they wish to outlaw tobacco. The last time I looked, tobacco was still a legal product in this country. If my colleagues want to make it honest and upfront about it. Let’s consider legislation to make it illegal. We can fight that here, out on the floor of the Senate. But let’s not keep trying to slip it through the back door; through overregulation and taxes in the name of preventing underage smoking.

Children should not have cigarettes. They should not. This is why we have age limits and advertising limits. We should do all that we can to keep cigarettes out of our kids. But the bill before us is not the answer. We can do better and should do better. All this bill does is move the regulation of a legal product from several agencies to another, one that has no jurisdiction to regulate it.

The only people this bill is going to hurt in the end are not the big tobacco companies, but the small and honest farmers who depend on tobacco to pay their bills. This is why I have offered four farmer-friendly amendments to the bill. I want to explain for a few minutes the four.

One, Bunning amendment No. 1236, clarifies that nothing in this bill would prevent our farmers from growing and cultivating tobacco as they have been able to do for the past hundred-plus years.

My second amendment, No. 1237, establishes a grower grant program that would help ease the financial burden of this bill on our farmers.

Amendment No. 1238 gives growers a seat at the negotiating table. The underlying bill establishes the Tobacco Scientific Advisory Committee made up of 12 members. Seven of those members are from the medical field to ensure that public health needs are taken into account. There is one of the public, and three representatives from the tobacco industry. There are two manufacturers and one grower. All members of the committee are voting except for the last three—the tobacco representatives. My amendment is simple. It establishes a representative for the right to vote and adds two more grower positions. That way, all three forms of tobacco—burley, flue cured and dark leaf—are represented at the negotiating table.

The final Bunning amendment, No. 1239, asks the FDA if they are going to impose any new restrictions or requirements on farmers, then they should consider and conduct a feasibility study so that we know the effect on the family level.

When my amendments come up, I encourage my colleagues to support them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. ALEXANDER. I ask unanimous consent that morning business be extended until 1 p.m.

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

The Senator from Tennessee is recognized.

AUTO STOCK TAXPAYER ACT

Mr. ALEXANDER. Mr. President, today along with Senator BENVENUTI and Senators McCONNELL and Senator KYL, I will introduce the Auto Stock for Every Taxpayer Act to require the Treasury to distribute to individual taxpayers all its stock in the new General Motors and Chrysler within 1 year following the emergence of the new GM stock out of the hands of Washington bureaucrats and politicians and into the hands of the American people in the marketplace where they belong. So instead of the Treasury owning 60 percent of shares in the new GM and 8 percent of Chrysler, you would own them if you were one of about 120 million individual Americans who paid Federal taxes on April 15.

This is the fastest way to get the stock out of the hands of Washington and back into the hands of the American people who paid for it. To keep it simple, and to help the little guy and girl also have an ownership stake in America’s future, Treasury would give each taxpayer an equal number of the available shares.

The Treasury Department has said it wants to sell its auto shares as soon as possible, but Fritz Henderson, president and CEO of General Motors, told Senators and Congressmen in a telephone call on Monday that while it is the Treasury’s decision to make, this is a “very large amount” of stock, and that orderly offering of those shares to establish a market may have to be “managed down over a period of years.”

Those shares might not be worth very much at first, but put them away and one day they might contribute something toward a college education. For example, General Motors’ 610 million shares were only worth 75 cents just before bankruptcy, but they were worth $49 per share a few years ago, and $75 a few years before that.

Already we can see what government ownership of car companies will look like...
June 4, 2009

CONGRESSIONAL RECORD — SENATE

FAMILY SMOKING PREVENTION
AND TOBACCO CONTROL ACT

Mr. DODD. Madam President, I wish to take a few minutes to speak about the importance of what we are doing to address the issues raised by my friend and colleague from North Carolina, Senator BURR, who has raised some important issues. We are debating, of course, very historic public health legislation. The bill before this body will, for the first time, give the Food and Drug Administration authority to regulate the tobacco industry and to put in place tough protections for families that have too long been absent, when it comes to how cigarettes are marketed to children.

As I have said, particularly over the last couple of days, I don’t think we can afford to wait any longer on this issue. As I think all colleagues are aware, every single day we delay action on this legislation, another 3,500 to 4,000 children across the Nation are snared by tobacco companies that target them with impunity as they try smoking for the very first time in their lives, three to four a minute, every single day. Smoking kills more Americans every year than alcohol abuse, AIDS, car accidents, illegal drug use, murders, and suicides combined. As tragic as all deaths are, particularly ones caused by the circumstances I have raised, if we took all of them together, they do not total the 400,000 people who lose their lives every year as a result of tobacco-related illnesses.

The Institute of Medicine, which is highly respected by all of us, and the President’s cancer panel have both endorsed giving the FDA authority. The Food and Drug Administration has 100 years of experience in regulating almost every product we consume in order to protect public health. A new agency is not the answer. Obviously, one more bureaucracy would not provide adequate resources to get the job done either. In the first 3 years, the Burr substitute provides just a quarter of the funding the FDA would need, even for its existing mission.

Our bipartisan bill provides adequate funding to effectively regulate tobacco products through a user fee paid by the tobacco industry. The Burr substitute does not provide adequate resources to get the job done. Our bipartisan bill gives the FDA strong authority to regulate the content of both existing and new tobacco products, including both cigarettes and smokeless tobacco products. The Burr substitute does not provide adequate resources to get the job done either.
substitute gives the new agency no au-
ority whatsoever over the content of
smokeless tobacco products, no matter
how much nicotine and no matter how
many cancer-causing agents are in
those products. The National Cancer
Institute, the American Cancer So-
ciety, the U.S. Surgeon General, and the
Public Health Service have all con-
cluded that smokeless tobacco prod-
ucts, as sold in the United States, are
a cause of serious disease, including
cancer.

This is not a partisan analysis. When
the Surgeon General, the National Can-
cer Institute, the American Cancer So-
ciety, as well as the Public Health
Service, says these products cause can-
cer and kill, that is not an ideolog-
ical conclusion. That is the scientific
opinion of the very agencies and orga-
nizations we rely on for this informa-
tion. They are saying, if one uses those
products, they could get cancer and
could die. Suggesting we ought to have
an agency with power to regulate those
products takes us in exactly the
wrong direction, given the growing use
of smokeless tobacco products. They
should be subject to regulation like
other tobacco products. This amend-
ment removes any kind of smokeless
tobacco substitute gives the Agency
no regulatory power to regulate
those products. The Burr substitute only
allows the Agency to con-
discrediting the test, the Federal Trade
Commission wrote:

That is from the Federal Trade Com-
munity, hardly an ideological or par-
tisan organization. That is their quote
on discrediting the test the PTC con-
ducted.

In addition, the National Cancer In-
stitute has determined there is no evi-
dence that reducing tar to a degree
even greater than called for in the Burr
substitute actually reduces the pro-
duction of risk of disease. The Burr sub-
stitute makes it likely that Americans
will continue to be misled by nicotine
tar ratings in a cloak of govern-
ment stamp of approval. Simply put, the PTC will
not be a smokescreen for the tobacco compa-
nies’ shameful marketing practices.

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not be a smokescreen for the tobacco compa-
nies’ shameful marketing practices.
by Surgeon General Richard Carmona, who was appointed by President Bush, when he addressed a congressional committee.

Let me quote the Surgeon General:

Do not fail for the myth—a very dangerous public health myth—that smokeless tobacco is preferable to smoking.

Again, this is the Surgeon General. Going back several administrations, Surgeons General, Secretaries of Health and Human Services, this is an issue that does not divide people. President Bush’s Surgeon General was a retired Army general, Richard Carmona. I see my friend from Arizona. I believe Richard Carmona is from Arizona. I had an opportunity to meet with him and talk with him in the past, and he did a good job.

I will quote him again:

Do not fail for the myth—a very dangerous public health myth—that smokeless tobacco is preferable to smoking.

He went on to say, and I quote him further:

No matter what you may hear today or read in press reports later, I cannot conclude [as Surgeon General] that the use of any tobacco product is a safer alternative to smoking.

And the 2008 Update of the U.S. Public Health Service Clinical Practice Guidelines regarding tobacco cessation concluded:

[T]he use of smokeless tobacco products is not a safe alternative to smoking, nor is there evidence to suggest that it is effective in helping smokers quit.

Senator BURR’s substitute only allows the agency to look at the health impact on individual users of tobacco products. It does not consider whether the reduced risk claim would increase overall public health harms by increasing the number of youth who begin using tobacco products or reducing the number of current users who quit. Senator BURR’s and our colleague Senator HAGGAR’s standard would allow health claims that would increase tobacco use levels and increase the total amount of harm caused by tobacco use.

To prevent health claims from being used to increase the number of tobacco users, our bipartisan bill gives the Food and Drug Administration authority over how these products are marketed. Senator BURR’s substitute eliminates that authority, putting our youth at greater risk. If you eliminate that authority, then, obviously, you have torn the heart out of what we are trying to achieve.

Senator BURR’s substitute fails to give even the new agency the authority to reduce youth access to tobacco products. Unlike our legislation, Senator BURR’s substitute does not establish or fund a nationwide program to reduce illegal tobacco product sales to children. In addition, because the Burr substitute allows any retailer to fully escape responsibility for illegal sales if the employer’s employees have permission to do so, the minimum standards in Senator BURR’s substitute, the bipartisan substitute, the Food and Drug Administration: Take over here. Take a look at all of this. Provide the regulations and the guidelines. If we can do it for the produce or the foodstuffs we provide for every pet in this country, we ought to be able to do it for the American children.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Arizona is recognized.

NORTH KOREA

Mr. KYL. Mr. President, I rise today to discuss recent events in North Korea. On April 5, the North Koreans tested a long-range Taepo Dong 2 missile, which traveled nearly 2,000 miles before failing in the Sea of Japan. This test, which the North Koreans described as an attempt to launch a satellite into orbit, represented an improvement in the range of North Korea’s missiles. In 2006, the Taepo Dong 2 only traveled 1,000 miles and did not successfully reach a second stage, as the most recent missile did.

U.N. Security Council Resolution 1718 prohibits the country’s use of ballistic missile technology, and the United Nations Security Council issued a statement on April 11 condemning the recent launch and calling on member states to implement existing sanctions against North Korea.

In response, North Korea abandoned the six-party talks, promising to reactivate its nuclear program and never to return to the six-party negotiating table.

Less than 2 weeks later, North Korea conducted a nuclear test. Between the Taepo Dong 2 test and the nuclear test, North Korea also launched at least five shorter range missiles. Intelligence reports also indicate another long-range test is in the offing for later this month or early July.

So far, world response to this latest illicit behavior has been one-dimensional, with leaders around the globe issuing condemnations of varying strength. President Obama issued a clear condemnation of North Korea’s action, stating:

North Korea’s ballistic missile programs pose a great threat to the peace and security of the world and I strongly condemn their reckless action.
Secretary Clinton echoed the President’s remarks and emphasized, as the President did in his April speech in Prague that—and I am quoting—“there are consequences to such actions.” The question is, it is unclear what consequences North Korea has in mind. And Susan Rice, our Ambassador to the United Nations, has been reluctant to commit U.S. support for the inclusion of sanctions in the U.N. resolutions currently being drafted.

Despite North Korea’s detonation of a nuclear device and test of long-range missiles designed to threaten us, the relationship between the United States and North Korea has not substantially changed. There are, however, several things that the United States could do to back up its condemnation of North Korea’s reckless actions. Thankfully, we have a number of options available to us, and we are not faced with the “shoot first, ask questions later” approach. Secretary of Defense William Perry advocated in a 2006 Washington Post editorial, when he argued that the United States had no other option than to destroy North Korea’s missiles on their launching pads.

Finally, the United States could continue to push North Korea to the state sponsor of terrorism list. North Korea was removed from this list when it agreed to a series of measures related to the disablement of its plutonium production at the Yongbyon reactor. Now that North Korea has renounced that agreement and restarted its nuclear program, there is no reason it should not return to that list.

President Obama indicated his support for this type of strategy on the campaign trail, saying:

“...if the North Koreans do not meet their obligations, we should move quickly to reimpose sanctions that have been waived, and consider new restrictions going forward.

Second, the United States could impose financial sanctions on high-level North Korean officials and banks affiliated with the North Korean Government. In March 2007, the U.S. Treasury ordered U.S. companies and financial institutions to terminate their relationships with Banco Delta Asia over alleged links between the bank and the Government of North Korea and froze certain funds of high-ranking North Korean officials.

Third, the United States could expand defense and nonproliferation initiatives. President Clinton’s Secretary of Defense Cohen recently argued in the Washington Times for reversing President Obama’s deep cuts to missile defense programs. I agree with Secretary Cohen that the President’s $1.4 billion of cuts do not send the right signals and are not well thought out, especially those who tout ballistic missiles as the chief element of their threats.

President Obama, in direct support of U.N. Security Council Resolutions 1695 and 1718, could also expand interdiction and intelligence cooperation under the Proliferation Security Initiative with our new partner, South Korea.

As the President said in Prague: Rules must be binding. Violations must be punished. Words must mean something.

These common sense steps would send a clear message to the North Koreans and their partners in proliferation that the United States is serious when it repeatedly refers to its consequences and is willing to employ all measures and its full leverage in order to influence North Korea and avoid conflict.

Of course, the United States should work with the international community to enlist its support for increasing pressure on the North Koreans, and the administration has signaled its support for a multilateral approach through its focus on working through the United Nations. But this approach is already limited by North Korea’s history of disregarding U.N. action and by continued Russian and Chinese waffling. I am not convinced new U.N. resolutions would be treated any differently by North Korea than the ones it has already ignored. As I mentioned to Secretary of State Clinton recently, the United States is determined to get the message across that a regime so willing to wreak famine and destruction on its own people is not beyond the traditional application of carrot and stick diplomacy. Moreover, we must continue our efforts to work with other nations does not excuse us from the responsibility to act ourselves. If Russia or China will not sanction North Korea, is that any argument that the United States should not? Of course not. We can offer nations attractive terms for their support, such as help in dealing with increased flow of North Korean refugees, trade incentives, or enhanced military-to-military cooperation, such as revoking the misguided Oney amendment and allowing Japan to purchase an export variant of the F-22 fighter. However, if other nations conclude that holding North Korea accountable is not in their interest, then we must not let that prevent us from doing what is best in our interest.

The gravity of events in North Korea is only increased by the similar disagreement between the international community and Iran on the subject of its nuclear program. If strong words are followed by weak and ineffective action toward North Korea, why should Iran expect different treatment? Conversely, if we display resolve and fortitude in confronting a belligerent regime, North Korea will have gained nothing, and Iran on a variety of illicit programs.

While some debate the proper U.S. response, I believe one thing is certain: Past negotiations have not been successful. North Korea has not been an honest negotiator. The best way to use, instead, “missile diplomacy” to spark international panic and extract a concession—typically fuel or grain ship-ments—from a worried international community. This process, in various permutations, happened in 1993, 1994, 1998, 2006, 2007, and it may repeat itself in 2009.

For those who would not repeat the pattern, the benefits are the benefits of a return to a period of mutual understanding, mutual trust, and regional stability. This is doubly true, as it will also send a powerful message to the rest of the world of our seriousness.

There is no reason it should not be possible to back up its condemnation of North Korea’s reckless actions. Thankfully, there is a clear message to the North Koreans: that—and I am quoting—”there is no reason it should not be possible to back up its condemnation of North Korea’s reckless actions. Thankfully, there is a clear message to the North Koreans: there are consequences to such actions.” The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask unanimous consent to be recognized for up to 15 minutes as in morning business.

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

Mr. INHOFE. I thank the Chair.

REMEMBERING TIANANMEN SQUARE

Mr. INHOFE. Mr. President, 20 years ago this week, on June 3 and 4 in 1989, the world watched the Communist Government of China violently crack down on peaceful demonstrators in Tiananmen Square. We all remember that. It is hard for me to believe it has been 20 years ago.

The picture that is forever imprinted on our minds and our memories is that of a lone Chinese student who stood before a line of army tanks following days of violence that had resulted in hundreds killed and thousands more wounded. We never did find out what happened to that young student. I assume he was taken away, tortured, and killed, but we don’t know that. He displayed tremendous courage in the face of tyranny and injustice. For weeks, students had raised their voices demanding greater democracy, basic freedoms of speech and assembly, and an end to corruption. While the photo of this student became infamous to the world as a picture of the Chinese people and their desire for true and lasting freedom and democracy, it remained virtually unknown to the people of China due to the Chinese Government’s continued censorship and oppression.

On March 25, the Speaker of the House of Representatives, Nancy Pelosi, while in past, North Korea’s actions have forced an unwelcome choice on the world: either North Korea is a threat and we must take actions across all fronts to isolate the regime and defend our Nation and our allies against its considerable capabilities or these actions are the brewing outbursts of a misunderstood regime.

The President has clearly said that North Korea poses a threat to world peace and security. It is now a question of matching action to rhetoric.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask unanimous consent to be recognized for up to 15 minutes as in morning business.

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

Mr. INHOFE. I thank the Chair.

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global warming and issues such as that. This week in Beijing, U.S. Treasury Secretary Tim Geithner followed the Pelosi model, remaining mute on human rights abuses that are going on today, and spoke only of environment issues.

In 2005, I gave a series of speeches on the threat China poses to our Nation. Now, 4 years later, we are in a position where they are the largest holder of our national debt, and my concerns regarding China remain the same. China is doing a better job than we are. They are competitors of ours not just militarily but economically. It is of great concern to me that as we continue to grow in our relationship and our dependence on China, our U.S. Government officials seem to place more value on the Chinese Government’s treatment of their own people and the threat they pose to our Nation.

On the 20th anniversary of the Tiananmen Square massacre, Pelosi and Geithner’s omission is a disgrace to the Chinese people who stood up against the government to allow them basic freedoms that we as Americans possess and enjoy.

So ignoring these issues is exactly what the Government of Beijing wants. They would like nothing more than to erase the memory of the Tiananmen Square massacre from our minds and from the minds of all people around the world. The Chinese Government would like us to forget that in June of 1989, they used lethal force of 300,000 troops strong to crush peaceful protestors who were seeking greater freedoms. The Chinese Government would like the image of that courageous protest before the line of tanks to fade from our memory. However, we can’t forget the hundreds who were murdered, the thousands who were injured, and the more than 20,000 people who were arrested and detained without trial due to the suspected involvement in the protests, specifically in Tiananmen Square.

We don’t know today where those people are. Most likely, they are still incarcerated somewhere or they have been killed. The Communist government is so bent on wanting us to forget these issues that they have shut down blogs, blocking access to individual news sources such as Twitter, and denied access to popular sites such as YouTube.

Since Tiananmen Square, China has continued to increase severe cultural suppression of ethnic minorities such as the Tibetans, the Uighurs; increase persecution of Chinese Christians, the Falun Gong, and other religious groups and political minorities; increase detention and harassment of dissidents and journalists; and has maintained tight controls on freedom of speech and access to the Internet. We know journalists who right now are still incarcerated over there, but there is no trace of exactly where they are.

Despite the promises to the contrary, China didn’t provide greater access to the Internet during the 2008 Olympic Games. Unlike the previous hosts of the past games, the Government in Beijing blocked access to certain Internet sites and media outlets in an attempt to censor free speech.

As China grows economically and continues to exert its influence globally and thus considers itself a significant player on the world stage, I believe China should be held to a standard of political, religious, and ethical responsibility.

Our country was founded by those who were seeking basic freedoms, and we have to stand for those who are doing the same in other countries. When basic freedoms can be practiced, countries thrive and prosper because people are allowed to choose a better way of life for themselves. We must also recognize the danger we place ourselves in by becoming closer and more dependent upon nations that continue to silence their people, deny them access to the Internet, and the ability to practice their cultures and beliefs. That is what is happening today.

On the occasion of the 20th anniversary of Tiananmen Square, my colleague from Ohio, Senator Brown, introduced S. Res. 167 to remember the families and the victims who were killed in the June 1989 protest and to call on the Government of China to put an end to its continuing human rights violations. Our country must not remain silent, and many of my fellow colleagues in the Senate who are cosponsors of this resolution agree.

This resolution calls on the Chinese Government to release all prisoners still in captivity as a result of their support for protests in Tiananmen Square and to release all others who are currently being imprisoned without cause. This resolution puts the Senate on record, encouraging the Chinese Government to allow freedom of speech and to access information, while ending the harassment, intimidation, and imprisonment practices the government has carried out against those who are minorities and who seek religious freedom. We also call on our government to uphold human rights in China. Our legislation cosponsors those who lost their lives and freedoms in Tiananmen Square.

We have this resolution right now. So far, we have cosponsors who have just found out about it and called in, including, in addition to Senator Brown and myself, Senators GRAHAM, LIEBERMAN, KYL, COBURN, VITTER, MENENDEZ, WEBB, and BROWNBACK. I encourage others to join in this message that I believe is a very clear message that should be sent by the United States.

Today—this very day, this moment—there are 150,000 people who are protesting in Hong Kong right now because of the problems we are addressing with this resolution. So I encourage my colleagues to join in this resolution and get this message out loud and clear.

GUANTANAMO BAY

Mr. INHOFE. Mr. President, one of our colleagues from Illinois was talking about their desire to have these detainees from Guantanamo Bay come into the United States for trial. Let me just suggest—I am not a lawyer, but I do know this: I have spent a lot of time down there. I know the situation. I know it is a resource that we have to have, that we have to keep. There is no justification at all for closing Guantanamo Bay. No justification. All we hear is: Well, this came at a time when there was suspected terrorism or torture of prisoners in other areas. But never at Gitmo. There hasn’t been a documented case of torture that went on there. This is a resource we need.

My friend from Illinois suggests bringing them to this country. The rules of evidence are different. These are not criminals; these are detainees. The proper place for them to be adjudicated is in the tribunals. The only place available right now is the tribunal that is set up in Gitmo. If we bring them to this country, under our laws, quite a few of those would actually be released. When they are released, they could be released into society. For those who say we need to use some 17 magnet areas in the United States, as opposed to using Gitmo, to incarcerate these people, that would become 17 magnets for terrorist activity in the United States.

We have to get over this thing of everybody lining up and saying we have to close it. Guantanamo Bay is something we need, and we have to have it. There is not a pleasant alternative. It would cause the release of terrorists in the United States. It is that the Senator from Illinois and the Democrats and the President want, they are going to find that virtually all Americans disagree with them.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

NUCLEAR ENERGY

Mr. VOINOVICH. As my colleagues know, supporting the development and expansion of the nuclear industry is something that has been one of my top priorities since I came to the Senate. I have been working to shape nuclear policy in this country for the past 8 years as chairman or ranking member of the Clean Air and Nuclear Safety Subcommittee. I wish to recognize my colleague, Senator INHOFE, for the leadership he provided before I became chairman of the Nuclear Regulatory Commission committee.

Mr. INHOFE. Mr. President, first, I compliment the Senator from Ohio.
When he was Governor of Ohio, he had the reputation of being the most knowledgeable person on air issues. Of course, the primary concern we had at that time was that we had a crisis in energy, and the one thing that had to be in the mix to resolve that crisis was to develop a substantial nuclear capacity. There is nobody who has carried that banner more forcefully than the Senator from Ohio. I appreciate our joint efforts to make that happen. I believe we will be successful with the number of applications that are substantial now and the progress that has been made.

Mr. Voinovich. I thank the Senator.

Mr. President, I take pride in the fact that our committee has helped transform NRC into one of the best and most respected regulatory agencies in the world. We have worked very hard on placing the right people on the Commission and providing the Commission with the resources and tools necessary to do its job and holding them accountable to the results. In fact, we have held more than 20 hearings involving the NRC in the past 8 years. So it is no accident that we have seen a dramatic improvement in the safety, the reliability of the 104 operating nuclear reactors today over the past 8 years. Without the public confidence that these plants are safe and secure, there won’t be any nuclear renaissance.

We have spent time and effort to make sure the NRC has the resources—particularly the human capital—it needs to make sure that our 104 nuclear plants are operating safely but also to ensure it can process multiple license renewal applications and combined license applications for the new plants coming on board. We wanted to make sure the NRC doesn’t become the bottleneck.

In 2005, we introduced three pieces of legislation as part of the 2005 Energy Policy Act to provide flexibility in hiring and employee retention. As a result, the NRC was able to hire over 1,000 highly qualified engineers and scientists over the last 3 years to replace retiring workers and also bring on those new people who are going to be necessary to process the new applications coming in. I am also pleased to note that the Nuclear Regulatory Commission has been rated as the best place to work among Federal agencies and employee retention.

I pointed out then that one of the glaring holes in the Lieberman-Warner bill was its deafening silence on nuclear, while studies conducted by EPA, EIA, and others pointed to an inconvenient truth for some people: More than doubling the number of nuclear plants would be required; that is, bringing online more than 100 new nuclear plants in the next 40 years, in order to hit the goals set in that legislation. Around the world, governments are reaching the same conclusion and are turning to nuclear energy as a safe, homegrown, cost-effective, and emission-free solution to increasing energy demand.

Mr. President, I have an opinion piece I wrote in the Nuclear News magazine last year, entitled “Making the case for nuclear.” This paper outlines the need to expand the use of nuclear energy in the carbon-constrained economy and provides a roadmap to overcome challenges faced by the nuclear industry.

Mr. President, I urge my colleagues to read this. Anybody interested can get it on my Web site, voinovich.senate.gov.

As I watch the climate change debate unfold in this Congress, I rise to raise in particular some concerns I raised last year during the debate on the Lieberman-Warner climate change bill: We cannot get there from here without nuclear.

The Waxman-Markey bill that was reported out of the House Energy and Commerce Committee 2 weeks ago sets the greenhouse gas emission reduction cap at 80 percent by 2050, as did the Lieberman-Warner bill last year, but it continues to ignore the need for much wider use of emission-free nuclear energy in our future. I think that makes this extremely aggressive goal.

I pointed out then that one of the glaring holes in the Lieberman-Warner bill was its deafening silence on nuclear, while studies conducted by EPA, EIA, and others pointed to an inconvenient truth for some people: More than doubling the number of nuclear plants would be required; that is, bringing online more than 100 new nuclear plants in the next 40 years, in order to hit the goals set in that legislation. Around the world, governments are reaching the same conclusion and are turning to nuclear energy as a safe, homegrown, cost-effective, and emission-free solution to increasing energy demand.

This is true, in Europe especially, where the nuclear renaissance is in full swing. In France, for example, almost 80 percent of its electricity comes from nuclear power. In fact, France exports a lot of its nuclear power-generated electricity to its neighboring countries, including Germany. President Sarkozy has announced plans to build five additional plants within the next 5 years, in addition to one currently under construction.

Prime Minister Gordon Brown recently signaled his intent to rebuild nuclear energy in the United Kingdom, saying:

"Whether we like it or not, we will not meet the challenge of climate change without the far wider use of nuclear power."

He went on to note that the International Energy Agency estimates that we are going to have to build 32 nuclear powerplants each year if we are going to halve greenhouse gas emissions by 2050. That is more than 1,300 new reactors.

Italy, Finland, and Switzerland have all announced plans to build new reactors after spending the past 20 years trying to phase out nuclear power. These European countries have come full circle in reembracing nuclear after two decades of trying to solve their energy and environmental challenges with conservation and renewables alone. That is significant.

Unfortunately, many proponents of a cap-and-trade scheme, such as Lieberman-Warner or Waxman-Markey, seem to be stuck on fantasies that we can achieve the emission reduction goals with just conservation, efficiency, and renewables. Even those who believe nuclear has a role to play espouse policies that overwhelmingly favor renewables over nuclear.

The case in point: In 2009, the case for nuclear energy was conspicuously missing from the $787 billion stimulus package, while approximately $40 billion in various tax credits went to energy efficiency, renewables, and transmission. I am not opposed to that, but why did they ignore nuclear?

So it was particularly discouraging when the Senate version of the legislative language providing an additional $50 billion in loan guarantee authority in the stimulus bill was stripped from the final package during conference. Who did it? Why? The same thing happened when the Senate version of the budget resolution was passed a few weeks ago. We had it in there. We know we have to increase the Loan Guarantee Program to at least $50 billion, and it got stripped out again. Instead, the majority added the taxpayer-paid $60 billion Loan Guarantee Program allocated solely for renewables—wind, solar, and geothermal—and electric transmission systems to support renewable generation.

If you can do a priority in spending big money, let’s do the grid. The grid is not what it should be. It has to be improved so that we can use wind and solar and get energy out across this country.

Unfortunately, many of the supporters of green energy never mention that it is unrealistic to rely solely on wind and solar power. This is also the case with some of the loan guarantees. Unfortunately, many proponents of green energy never mention that it is unrealistic to rely solely on wind and solar power. This is also the case with some of the loan guarantees. Unfortunately, many proponents of green energy never mention that it is unrealistic to rely solely on wind and solar power. This is also the case with some of the loan guarantees.
American people about the reality of what is possible.

They continually tout the need to increase the renewable energies to solve our dependence on foreign sources of energy. They say we need to double our use of them. I tell you this: A doubling of the utilization of renewables will bring us to 6 percent, and it would likely take at least 10 years or more to accomplish. Further, it is unlikely that a doubling in renewables would lead to any significant decrease in the greenhouse gases because we produce 2 percent of the electricity in the country today.

Particularly, I think it is incredible that some policymakers, such as the newly appointed Chairman of FERC, suggest we can get our energy needs strictly from renewable sources of energy. Give me a break. At only 3 percent of total U.S. electric generation, it is simply intellectually dishonest to suggest that these renewable sources can replace even 10 percent of the baseload electricity currently generated by coal and nuclear in this country.

Don’t get me wrong. I do support expanding the use of renewables such as solar and wind, and we see that industry growing in my State. But to just say that is it and not to look at reality is intellectually dishonest. My point is that, realistically, we are not yet in a position to be able to rely upon them for base-load power generation. This is despite receiving government subsidies.

Here is another little statistic people are not aware of. Most Americans are not aware of the fact that, in 2007, nuclear energy only—this is according to the Energy Information Agency—received a $15.99-per-megawatt-hour subsidy while wind received $23.37 and solar received $24.34 per megawatt hour.

Today, there is a huge energy gap between renewable electricity and the reliable, low-cost electricity we must have. We need to look at the way to get the job done. If we want to generate carbon-free electricity, nuclear needs to be a big part of it—I am not saying the only part, but it has to be a big part.

The 104 nuclear powerplants we have operating today, which is 20 percent of the electricity generated, represent over 70 percent of the Nation’s emission-free portfolio. In other words, the 20 percent coming from nuclear represents 70 percent of the emission-free electricity in this country.

That means we are avoiding 700 million tons of carbon dioxide each year because of nuclear—700 million tons.

What does that mean to the ordinary citizen? That means 13 million tons is avoided by wind and solar today. That is compared with 700 million in terms of nuclear power. To put this in perspective, 700 million tons of annual greenhouse gases are being avoided by our nuclear plants is more than what Canada collectively emits each year. In other words, nuclear nonemitting into the air is the equivalent of all of Canada. In terms of something we may better understand, it is the equivalent of 130 million cars each year. That is what nuclear power is doing for us. In effect, it is the equivalent of reducing emissions of 130 million automobiles each year in this country.

Nuclear power is the best source we have available to meet our energy needs while also curbing emissions of greenhouse gases. People are recognizing the importance of nuclear energy because they understand the facts.

Public opinion widely supports utilizing nuclear energy. According to a recent Gallup poll, 59 percent of Americans support it. We are not going to be able to turn around around our economy, meet our energy needs, and enact some of the environmental policies being discussed today without expanding the use of nuclear energy.

I look at nuclear as a three-fer. Without it, we are not going to be able to provide the baseline electricity we are going to need for our country. And without it, we are not going to be able to rebuild our manufacturing base in this country.

At a time when we are struggling to regain our economic footing, nuclear energy offers thousands of well-paying jobs in all stages of development and production. Each new nuclear plant will require an average of 2,000 workers during construction, with peak employment at 2,500 workers. If the industry were to construct 30 reactors that are currently planned, well over 60,000 workers would be required during construction. And once constructed, each plant will create 600 to 700 jobs to operate and maintain it.

That is not to mention the ripple effect this undertaking would make in other areas of the economy. Aris Candris, CEO of Westinghouse Electric, and Mike Rencheck, president of AREVA, recently told me that about 12,000 jobs will be created for each new nuclear plant if you include the manufacturing jobs.

This means that more than 200,000 manufacturing jobs will be created to supply the needed parts and components for the 30 nuclear reactors that are currently planned.

And that is not counting the jobs associated with export opportunities to Europe, China, and India.

Organized labor understands expanding nuclear power will create a lot of well-paying jobs. In fact, here is what John Sweeney said at a roundtable discussion on nuclear workforce issues I chaired last year:

This isn’t a Republican issue. This isn’t a Democratic issue. It’s an American issue.

I couldn’t agree with him more.

I have met with Mark Ayers, President of the Electrical Construction Trades national union. He and his union members are actively supporting nuclear power will create a lot of good-paying jobs. In fact, here is what John Sweeney said at a roundtable discussion on nuclear workforce issues I chaired last year:

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required fees, including what is called a subsidy cost and, thus, there is no cost to the government. In other words, if they borrow $5 billion, they are going to have to come up with close to $1 billion to secure that loan so if things do not go well on the loan, we have to cover it all.

The subsidy cost is levied on each loan guarantee, similar to a downpayment on a mortgage, in case of a default. Any potential defaults are covered by fees paid by the applicants.

In May, I received a copy of a recent MIT study on the future of nuclear power. The authors of this study include former Clinton administration officials John Deutch and Ernest Moniz. The central premise of the MIT study on the future of nuclear power is that in order to reduce greenhouse gas emissions and mitigate global warming, we must reevaluate the role nuclear power has as part of this country’s energy future.

I wish to share the conclusions of this report because I believe it fits rather nicely with this speech:

The current assistance program put into place by the 2005 Energy Policy Act has not been effective and needs to be improved. The sobering realization is that without a clear solution, our only option is not to do anything. We can’t do that.

I commend to my colleagues this MIT report on the future of nuclear power.

Another issue that has plagued the nuclear industry for decades is the U.S. Government’s failure to meet its commitments to assure responsibility for spent nuclear fuel. First, let’s set the record straight. I have talked with many experts and policy people, including Secretary Chu and NRC Chairman Klein. They all assured me—it is important to everyone here to understand this—that the current spent nuclear that is being stored today in dry casks and pools are safe—safe and secure for at least 100 years. That is very important because folks are saying you cannot go forward with this because we don’t know what to do with the waste; we would like to do something more permanent than what we are doing.

But the fact is that with the dry casks we have, we are in good shape for at least 100 years. The lack of a repository at Yucca should not be something that inhibits us from licensing new reactors.

That being said, we must pursue a long-term solution now. If Yucca is not going to work, then we owe it to the American people a viable alternative.

I recently met with Secretary Chu, and he told me he would convene a blue ribbon panel to study Yucca. Unfortunately, I believe this is just kicking the can down the road for a couple of years. We have been studying this for more than four decades. We need to come up with a long-term solution sooner rather than later.

If this administration is pulling the plug on Yucca without having a viable alternative long-term solution, then I think we owe it to the American people to refund their fees and stop levying fees.

I introduced the U.S. Nuclear Fuel Management Corporation Establishment Act of 2008 in the last Congress, together with Senators Domenici, Murkowski, Alexander, and Dole, to create an independent government corporation to manage the back end of the nuclear fuel cycle. The bill will also take the nuclear waste fund out of budget and give it directly to this corporation without the budget/appropriations process. I am planning to reintroduce this legislation soon.

I firmly believe that utilizing nuclear energy as a key part of a mixed bag of energy sources offers us the best opportunity to truly harmonize our energy, the environment, and economic needs.

As I said before, nuclear energy offers thousands of well-paying jobs in all stages of development at a time when the economy is struggling to regain our economic footing. It is worth repeating—$12,000 well-paying jobs will be created with each new nuclear powerplant. That is 360,000 jobs for the 30 nuclear reactors that are currently planned.

The American people get it, manufacturing gets it, the labor unions get it, and the international community—I have been to London, I have been to Paris, I have been to Austria. I have told everyone that all of them understand. In fact, I was on a climate change panel about a month ago that was sponsored by the German Marshall Fund when we met in Brussels. I was amazed at the number of people who said: Mr. Senator, we are never going to meet the Kyoto or Copenhagen goals for reducing our emissions without the use of nuclear power.

It is time President Obama and this Congress do something to get it. We have to launch a nuclear renaissance in this country. We just cannot get there from here without nuclear.

Mr. President, I yield the floor.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NELSON of Florida. I ask unanimous consent that the order for the quorum call be rescinded. Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that morning business be extended until 2:15 p.m., with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Florida.

THE STIMULUS

Mr. NELSON of Florida. Mr. President, the question that has been posted before the Senate is, What has the stimulus bill done? It has some dangerous name—the recovery act—but, in effect, it is known as the stimulus bill. It was an expensive bill. With the country in the economic doldrums that we have been in, it was hoped it was going to get money out there into the economy and provide a kind of electric shock therapy and stimulate the economy to get it moving again; that it would turn the engine of the economy and, therefore, as those dollars in the stimulus bill got injected into the economy and it turned over, it was going to create jobs.

Indeed, the number of jobs that it was expected the stimulus was going to create was something like 2½ million. So the question is, Is it stimulating the economy? Well, a few months ago, the CEO of the Shands HealthCare Center at the University of Florida was in my office. He told me the story of how the Shands Hospital in Jacksonville—there are a number of these Shands Hospitals; it is a true medical center complex over several cities—was short some $35 million, and he didn’t know what he was going to do and how that was going to affect their operation—possibly the shutdown of major portions of that hospital.

Remember that one part of the stimulus that was injected was money into Medicaid to help the States, and there were States that had not been doing their part on Medicaid,
which is a joint State operation—generally with a funding formula of about 55 percent Federal, 45 percent State. A lot of the States hadn’t been putting their share in, or they had been constraining the eligibility for the poor and the disadvantaged to have access to health care for Medicaid. Well, with the beneﬁciency of the stimulus bill, we put a lot of money back into the States. In Florida’s case, it was about $4.5 billion, just for Medicaid. It went from a funding formula—in Florida’s case—it went from 24 percent Federal, 76 percent State, to a funding formula of 67 percent Federal, 33 percent State. That has allowed him to stop the major abrupt halt of that hospital in Jacksonville, FL.

Let me give another example. The big county hospital in Miami—Jackson Memorial Hospital—is a similar case of about a $45 million whack that was going to occur because of the State of Florida constraining its Medicaid funding. The bill for Florida allowed that additional money to ﬂow and, therefore, that hospital will not have its services terminated for a good part of the medically needy as well as the disabled.

Another example: In my State, the U.S. Army Corps of Engineers has awarded over $100 million in stimulus funds to jump-start crucial Everglades restoration projects, such as the Pica-yune Strand and the Site 1 Reservoir construction. Now they combine that with an additional $140 million in stimulus money for other projects such as water quality improvements down in the Florida Keys, then the spending in Florida is going to create about 2,000 direct jobs and 5,000 indirect jobs. Overall, the stimulus bill is going to create over 200,000 jobs in the State of Florida.

Another example: Seminole County School District. Seminole County is to the north of Orlando. It is a major bedroom community for the metro Orlando area. Well, they had a plan to eliminate 139 teachers. Because of the stimulus bill, they reversed that plan.

Clay County, to the south of Jacksonville, in northeast Florida—another bedroom community for the metro Jacksonville area. It will bring back 26 elementary school teachers who had been laid off.

Another example: I am just taking a few examples. Miami, Dade County. It has one of the largest highway improvement projects in our State—the Palmetto Expressway. It has been under construction continuously since 1994 because of the mass of people who utilize that arterial roadway. Now they are going to be able to complete that and put hundreds of people to work.

Another example: Northeast Florida. The military complex in Jacksonville—the Jacksonville Naval Hospital and Kings Bay and Mayport Naval Station. The $40 million of stimulus funding is going to be spent over the next several years for improvements for those hospitals and at the air station and at the Kings Bay submarine base, which means architecture, construction, and engineering jobs on top of expanded hospital facilities and energy efﬁcient upgrades.

Another example: St. Johns County, St. Augustine, FL—the oldest continuous settlement in the United States—1565. We are going to celebrate the 450 year anniversary. We have 42 years on the English settlement in Jamestown, VA. Not 1607, Jamestown; but 1565, St. Augustine. Well, their school system was going to cut teacher and staff salaries and force them to take unpaid days. Now they are going to get an infusion of an additional $9 million this year and another $9 million next year so these cuts won’t occur.

Going over to the West Coast of Florida—Tampa. The Tampa International Airport. It is going to create 250 new jobs using $8 million from the stimulus bill to go out there and improve a taxiway on one of the major runways. This is a job that would not have been done had it not been for this bill.

I will give one ﬁnal example. Go back to north Florida. We have a huge forestry industry in Florida. But as we have seen, Mother Nature has not been kind in bringing us droughts. When a drought occurs, the forest becomes a tinderbox. When a match is struck or a lightning bolt strikes, the forest erupts into an enormous ﬁre that becomes a contagion that can rage out of control and impinge on urbanized areas. Well, the Florida Department of Forestry is putting contractors to work on ﬁre mitigation projects in high-risk communities using a $900 stimulus grant.

It is helping in my State, and I suspect it is helping in all the other 49 States that are represented on the ﬂoor of the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. BURR. Mr. President, I ask unanimous consent that the Senate be in a period of morning business with Senators permitted to speak for 10 minutes.

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

Mr. BURR. I ask unanimous consent to be recognized for 30 minutes.

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

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. BURR. Mr. President, we are desperately working to try to make sure we can move to amendments on H.R. 1256, a bill that attempts to consolidate the regulatory responsibility for tobacco products under the FDA.

This is being sold as a public health bill. I have been now to the ﬂoor for over 75 hours in the course of this week suggesting it does not meet that threshold and that, at some point today, I would have the opportunity, along with Senator HAGAN, my colleague, to give, in some detail, what is in this substitute and the substitute which is a joint State operation—generally working to try to make sure it is helping in all the other 49 States.

Mr. President, I ask unanimous consent that the order for the extension of morning business be dispensed with.

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

Mr. BURR. Mr. President, I ask unanimous consent that the Senate be in a period of morning business with Senators permitted to speak for 10 minutes.

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

Mr. BURR. I ask unanimous consent to be recognized for 30 minutes.

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

Mr. BURR. Mr. President, I ask unanimous consent that the Senate be in a period of morning business with Senators permitted to speak for 10 minutes.

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

Mr. BURR. I ask unanimous consent to be recognized for 30 minutes.

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Mr. BURR. Mr. President, we are desperately working to try to make sure we can move to amendments on H.R. 1256, a bill that attempts to consolidate the regulatory responsibility for tobacco products under the FDA.

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other innovative products, other new products, in the marketplace to move smokers from very risky products to less risky products. In the case of Swedish snus, you see a risk level of about 2, maybe 3 percent.

The challenge to a product that has yet to hit the market except for test markets, the one I covered by CNN as a candy, one that still meets the age requirements and sufficiency of ID for somebody to purchase.

But to magnify CNN’s report, they actually took that product from behind the counter and put it in the candy section next to Reese’s cups and gum and had an underage person come up and take one as CNN filmed to make it even more appealing from a standpoint of a story.

But this is the product. This is the product some have come to the floor of the Senate, and I look at the bill, I am not sure. It does not look like my cell phone. Maybe it looks like somebody’s cell phone but not mine. It is not a product that is accessible for anybody who does not produce an ID and does not meet the minimum age requirements of that State.

Risk? About 1 or 2 percent. We are actually getting better with every product that is innovative: therapies, gums, patches, lozenges, pharmaceutica, negligible, if any, risk.

Let me explain why I started with this because the base bill that is being considered, 1256, takes these categories right here, nonfiltered cigarettes and filtered cigarettes, it locks them in forever. The legislation says to the FDA: You cannot change these categories unless you find some specific thing that would cause you to alter it. It forbids the FDA.

Even though H.R. 1256 creates a pathway for less harmful products, it is a pathway that cannot be met because one of the conditions of new products entering the market is, you have to prove that people who don’t use tobacco products will not be enticed to use these products. It also says you can’t communicate with anybody in the public unless you have a product that is approved.

I ask: How do you meet the threshold of proving that somebody who doesn’t use tobacco products is not going to use this product, if you can’t communicate with them until you get the product approved by the FDA? I have come to the conclusion, since nobody who is a co-sponsor or author of the bill has come up with an answer, it can’t be done.

To claim that this is a public health bill, one would have to make a reasonable claim that these products are going to be available and maybe potentially more products in the future. But what H.R. 1256 does is, it cuts off availability of product right here. It says, on this side of the line, we have constructed a pathway that nothing will pass. I don’t believe you can make a genuine claim that this is a public health bill when you have locked every user into the 90- or 100-percent category of risk.

Senator HAGAN and I have offered a substitute amendment. That amendment will be voted on about 4:30 today, if things go according to schedule. It is absolutely essential that Senators listen to their staffs who have read the bill, read the substitute amendment, and listen. If they are there are a lot of things that go on during the day. It doesn’t allow Members to sit down and listen to what RICHARD BURR is going to say. Hopefully, staff has presented the facts I have brought to the table, the claims I have made, and understands I am right. H.R. 1256 is not a public health bill.

The substitute does allow this to happen. We allow it to happen because the substitute amendment regulates in the Food and Drug Administration, an agency that, by their mission statement, is required to prove safety and efficacy of all products they regulate. Pharmaceuticals, biologics, medical devices, food safety, cosmetics, products that is approved, that is the pathway that cannot be met because the gold standard in the world is the FDA. They regulate 25 cents of every dollar of the U.S. economy. They are the gold standard for every American. When they get a prescription and go home to take it, they know that it is safe or not, whether it will work because the gold standard in the world is the Food and Drug Administration. When they go to a doctor’s office and they get ready to use a device, they don’t question whether it was something the doctor made in the back room. They know that device was approved by the FDA.

Up until recently, they had every assurance when they bought food that food was not contaminated, that it wouldn’t make them sick. But as we know over the past several years, we have had things that have slipped through, and Americans have died. The FDA is struggling today to make sure that, in fact, they meet the demands of the regulation they have in place.

What I am saying is, don’t concentrate this regulation at the FDA. Don’t jeopardize the gold standard. Employees work there with a complete understanding that if it doesn’t pass these safety measures, it is not receive approval of the FDA.

Let me say it as I said it a couple hours ago. Tobacco products are not safe. Tobacco products cause disease and death. There is no way the Food and Drug Administration, on their current mission statement, can regulate a product they can’t prove safe and effective. If you try to put a square peg in a round hole, you will have reviewers at the FDA who say: The gold standard is no longer important because Concor is no longer important. It is important. If I turn my head on tobacco products, I can turn my head on this medical device because it doesn’t look like it is going to be dangerous. All of a sudden, something is going to slip through, a pharmaceutical product that kills somebody, a device that does somebody damage, because we lowered our guard. We lowered the threshold so every product must meet to get approval.

I am not advocating for the Federal Government to sit back and do nothing with respect to tobacco. I am advocating that we craft a bill that will achieve the real goal. What the federal regulation should accomplish: To reduce death and disease associated with tobacco and to reduce youth usage of tobacco products. That is exactly what our substitute amendment does. It is designed to keep kids from smoking. But you can’t keep kids from smoking if you are not willing to limit advertising.

In the base bill, H.R. 1256, they limit printing advertising to black and white. In the substitute amendment, we eliminated that. In the current base bill, they restrict print advertising to black and white only. In the substitute amendment, we eliminate the ability for print advertising. The substitute amendment is actually tougher on advertising than the base bill.

Specifically, the Burr-Hagan amendment bans outdoor advertising, youth-organized sponsorships, usage of cartoon characters, sponsorship of events that attract under age kids, all provisions, all designed to limit children’s exposure to tobacco advertising.

Our amendment does not stop at print advertising. The amendment codifies the other youth marketing restrictions contained in the Master Settlemint Agreement of 1998 and makes it a crime for underage youth to possess tobacco products. Let me say that again. In 1998, all the tobacco companies got together, responding to State lawsuits that had gone out of control and that tobacco contributed to it. They provided $280 billion to all 50 States for two things: Cost share of their health care and so they could create cessation programs to get people to quit.

I covered in great detail over the last couple days that even with this money available, one State only spent 3.7 percent, not of their total money, of the amount of money CDC said was adequate that youth attend, and many other provisions, all designed to limit children’s exposure to tobacco advertising.

I pointed out one yesterday. I will point it out again. The State of Ohio is a large State. Of the amount CDC recommended Ohio should take of the tobacco money and devote to cessation programs, Ohio spent 4.9 percent. When you hear these numbers, no wonder we are not doing better at moving people to quit. To get them to quit, we must literally get them to quit altogether. It is because the effort we have made through education has been pitiful. As a matter
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of fact, 21.6 percent of the youth in Ohio have a prevalence to smoke; 45 percent have a prevalence to alcohol; 17.7 percent have a prevalence to smoke marijuana. Yet some come to the floor and claim that if we give this to the FDA, youth smoking, youth usage will go down. If that were even partially correct, the marijuana usage would be zero because it is illegal. There is no age limit.

Some will claim we don’t address labeling, warning labels on packages of cigarettes to discourage children from even looking at them. We require warning labels on the front and the back. We require graphic warning labels that show gruesome and tragic cases of mouth cancer, lung cancer, and other pictures designed to deter children from smoking. As my colleagues can see, keeping kids from tobacco advertising is a key component to the Burr-Hagan substitute amendment. Compare that with the underlying bill, money will not tell you the same commitment to limit advertising that children see. The underlying bill contains graphic warning labels but doesn’t limit print advertising. Tobacco companies would still be able to advertise products such as, People, U.S. Weekly, and Glamour—clearly, purchased by their parents but accessed by their kids, and they can then see the black-and-white ads.

Maybe in some weird way the authors of this bill thought children can’t read black and white, that they can only read color. That is why they chose to limit it just to black-and-white advertising.

The only stipulation is, the ads would be in black and white. We can do better. We can absolutely do better than this. Keeping children from using tobacco products must be the first accomplishment of Federal regulation. The Burr-Hagan amendment accomplishes this with a two-pronged attack. First, our amendment encourages States to use more of their MSA payments on cessation, putting billions of dollars into the effort. In the last 10 years, States have used just 3.2 percent of their total tobacco-generated money for tobacco prevention and cessation. In 2009, no State is funding tobacco prevention programs at CDC-recommended levels. Our amendment would change this by requiring States to comply with the CDC-recommended spending levels on cessation programs. It would no longer be voluntary.

In the case of Ohio, instead of spending 4.9 percent, Ohio would be obligated by law, if we pass the substitute amendment, to spend 100 percent of what the MSA said needed to be spent for us to successfully make sure our Nation’s children were given the message that the use of tobacco products is not an advantageous thing.

Studies show that when States commit to cessation, youth smoking and smoking in general declines. Unfortunately, the underlying bill, H.R. 1256, contains no cessation program. Even though the bill requires the manufacturers to pay up to $700 million a year, it contains no cessation program. How can you call this a public health bill? How can we suggest this is going to reduce the risk of death or disease? How can we make the claim we are going to reduce youth usage, when there is no commitment, no requirement to cessation?

Secondly, our amendment assists current smokers who are unable and unwilling to quit by acknowledging a continuum of risk of tobacco products, what I showed here. More specifically, our amendment does not preclude reduced exposure products from entering the marketplace. The piece over here, they lock this in. We try to pull all the 100 percent, 90 percent over here to less harmful products because the objective in this bill should be to reduce death and disease.

There is a great debate underway in the academic world on tobacco control. Should we create the abatement of tobacco. Straight abolishment is hard to achieve and can bring many unintended consequences such as elicit trade, and we all know that. Since abolishment is not an effective solution at this point, the question remains: How do we lower death and disease rates associated with smoking? Nicotine therapy has proven to be a failure. NIH states that patches and lozenges and other things have a 95 percent failure rate. They fail because smokers don’t use these products as they do cigarettes. They are marketed poorly and are not designed to be a long-term solution. Under H.R. 1256, the base bill, that trend continues.

Also, H.R. 1256 does not give manufacturers of nicotine products the regulatory framework needed to market and enhance smoking replacement products appropriately. Since we have scratched current nicotine therapy products and not an effective means to stop smoking, that leaves us with very few options. The most promising option the Federal Government can help perpetuate to reduce death and disease associated with smoking is low-nitrosamine smokeless tobacco products.

Until recently, the academic community resisted the fact that smokeless products could aid in tobacco harm reduction. Skeptics, many of whom helped write the underlying bill, stated that smokeless tobacco products are gateway products that will lead to more children smoking.

Experience and data shows different. Over the last 20 years, Sweden has allowed tobacco manufacturers to promote light, snus, smokeless tobacco products, as an alternative to smoking.

This quote is from the Royal College of Physicians dated 2007:

In Sweden, the available low-harm smokeless products do not physically useable to be an acceptable substitute for cigarettes to many smokers, while “gateway” progression from smokeless to smoking is relatively uncommon.

You get where I am going. The data is out there. I never dreamed we would use Sweden as an example of where the United States would go. But when the time comes on how you mitigate the risk of disease and death, they never lost focus of what that was. They were not clouded as to the introduction of new tobacco products in a blinded effort to lock in what existed. They experimented and found products that would actually entice smokers to switch.

The claim that in some way, shape or form these products are gateway products that they wish the non-smokers and turn them into smokers—for the Royal College of Physicians, in 2007: “relatively uncommon.”

No statistic is perfect, and I am sure there are some who might have made a going to do on the legitimation, is 1s. But as you saw on the chart before, had they decided to use it, the risk of that Swedish snus was not 100 percent, it was 3 percent. There was no risk of heart disease, COPD, lung cancer, the threat that one might use these products, as shown on the chart over here, that the base bill H.R. 1256 locks in.

As a matter of fact, let me bring this other chart up: Harm Reduction: Smokers, Quitters, Switchers. The question we have to ask is, do we want people to be smokers? Do we want them to be quitters? Or do we want them to be switchers? Because this graph clearly shows, they that the major reduction—quite dramatic—in the relative risk for quitters and switchers in relation to smokers. What every Member will have to ask themselves, as they get ready to decide what they are going to do on this legislation, is: Do we want the American people to be smokers? Do we want them to be quitters? Or do we want them to be switchers?

If the answer is, you want them to be quitters or switchers, then it is very easy. Support the Burr-Hagan substitute. Because the base bill, H.R. 1256, does not create any effort to have quitters or switchers. All it does is lock in smokers. And if the bill’s intent is to reduce the risk of death and disease, common sense tells you, without creating quitters and switchers we are not going to do a very good job of reducing the risk of death and disease.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 4 minutes remaining of the 30 minutes granted.

Mr. BURR. I thank the Presiding Officer.

Mr. President, you see the chart behind me. The Lancet supports the goal of harm reduction. I will be honest with you, I do not know what the Lancet is. But I have been told it is a very reputable health publication. But let me quote it:

We believe the absence of effective harm reduction strategies for smokers is perverse,
unjust, and acts against the rights and best interests of smokers and the public health.

A reputable health publication that basically says: The absence of effective harm reduction strategies acts against the rights of smokers and public health. But the base bill, H.R. 1256, has no effective harm reduction strategy, no pathway to harm reduction products. But they claim it is a public health bill. A health care publication says that cannot happen. It is ‘perverse.’ It is ‘unjust.’ Well, they said it. I did not. But I think what they mean is, that to consider passing H.R. 1256, with the knowledge that has been given, would be perverse, unjust.

I am not going to have an opportunity to talk fully at this time because I have a colleague who will take the floor. But let me say, I talked earlier about Camel Orbs and the way CNN portrayed this product as candy and staged a news event—well, ‘news’ would be—let’s say ‘entertainment event’ by taking this from behind the counter in a convenience store and putting it in the candy section and having a kid go up and pick the Orbs up out of the rack to say that it was candy.

Orbs represents a 98-percent reduction in death and disease associated with tobacco use compared to cigarettes.

I ask my colleagues, if the objective of Federal legislation is to reduce the risk of death and disease—with unfiltered cigarettes, it is 100 percent; with filtered cigarettes, it is 90 percent; and with Orbs, it is 1 percent—Isn’t it perverse and unjust not to allow the American consumer to have this product to switch from cigarettes? I think the answer to the question has already been answered.

I yield the floor.

The PRESIDING OFFICER (Mr. Udall of Colorado). The Senator from Ohio.

Mr. BROWN. Thank you, Mr. President.

I ask unanimous consent to address the Senate for up to 10 minutes.

The PRESIDING OFFICER. Is this objection? Without objection, it is so ordered.

Mr. BROWN. Thank you, Mr. President.

20TH ANNIVERSARY OF THE TIANANMEN CRACKDOWN

Mr. BROWN. Mr. President, 1989 was a seminal year in world history. Late in the year, on November 9, the Berlin Wall fell. And like dominoes, Poland, Hungary, Czechoslovakia, and Bulgaria went from being Soviet satellites to nascent democracies.

The revolutions of 1989 would set the tone for the quick and peaceful breakup of the Soviet Union. The winds of change were bringing democracy and freedom to the oppressed. I look forward to supporting the peaceful revolutions of 1989 later this year.

But I want to speak today about the revolution that never was, an event that took place 20 years ago this week, in a country where people remain subject to totalitarianism and tyranny—a peaceful prodemocracy rally that was snuffed out with a brutality the world had not seen since the invasion of Czechoslovakia by the USSR in 1968.

It started much like the revolutions of 1989. Hu Yaobang, the Sixth General Secretary of the Communist Party of China, was famous for supporting ideas like political reform and capitalism—not much different from Lech Walesa of Poland or Vaclav Havel of Czechoslovakia.

When he died on April 15, 1989, thousands of Chinese students began a peaceful protest in Tiananmen Square in his honor and to call for support of his views. Protesters continued to assemble for weeks, calling for nothing more than a dialogue with their government and party leaders on how to combat corruption and how to accelerate economic and political reforms such as freedom of speech and democracy.

More than a million people would eventually gather in Tiananmen Square in the shadow of the Forbidden City and the monument in front of Chairman Mao’s mausoleum. That 1 million peopleeregaged were just in Beijing. Protests had spread across the vast expanse of China, in city after city and community after community.

On the night of June 3, 1989, 15,000 soldiers in armored tanks blocked Tiananmen Square to put down the protests.

On June 4, the Chinese Red Army fired upon the protestors and those in the surrounding areas.

On June 5, as the crackdown continued, more than 300,000—300,000—Chinese troops amassed in and around Tiananmen Square.

There, the world witnessed one of the pivotal moments of the 20th century—20 years ago. An unknown protestors stood in front of a column of Chinese Army tanks. He stood alone. Surely he wanted the tanks to stop. Just as surely, he wanted to stop the violent crackdown. He has become an enduring symbol of freedom and democracy in this country and around the world—but not in China, where the image and accounts of the heroic act are banned, attempts to erase it from history.

The identity and fate of this young man are not known. However, it is generally agreed that he died in a Chinese prison for his brave act of nonviolence.

The Chinese Government continues to deny Western estimates of 300 dead and 20,000 arrests and detentions during the Tiananmen crackdown.

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Today, in Beijing, police are on the streets in and around Tiananmen Square to preempt—not to control but to preempt—any observance of the anniversary.

In Hong Kong, 150,000 people showed up for a candlelight vigil in remembrance of those who died 20 years ago this week.

The government has shut down much of the Internet, including Western news sources, for fear that its citizens may learn what really happened. The police are using umbrellas to block cameras. It is a spectacle and it is a travesty.

For too long, the West has looked the other way as China declares a war on human rights.

For too long, the West has rewarded China with lopsided trade policies while China continues to carry out a war on minority cultures.

The United States should not endorse China’s manipulation of the currency. Most economists agree that the Chinese yuan is too low, undervalued. The manipulation is a simple subsidy—a coercing and false price reduction—on everything it produces. It puts our manufacturers at a disadvantage, but there is much money to be made by U.S. investors that invests and large corporate interests and our government simply look the other way.

China profits from its abysmal human rights record. It profits from its nearly nonexistent environmental standards. But American investors, American corporations, and the American government look the other way.

China refuses to enforce its labor laws. But there is money to be made. So American investors, American corporations, and the American government look the other way. China benefits from its human rights abuses, but again, American investors, American corporations, and the American Government look the other way.

The government has shut down much of the Internet, including Western news sources, for fear that its citizens may learn what really happened. The police are using umbrellas to block cameras. It is a spectacle and it is a travesty.

It is not just the Chinese who are pushing for the status quo. Investors

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who profit from their investments in China—American investors. American companies—actively support a regime that is trying to become a global competitor with our Nation. Multinational corporations know no boundaries. Too often these companies leave their moral compass at their base camps.

The United States and all democratic governments should stand up to, rather than apologize for, China’s brutal regime. If China seeks to become a responsible member of the international community, its actions should match its aspirations.

Since the Tiananmen Square protest and crackdown, China has continued to deny its people basic freedoms of speech and religion and assembly. It has increased severe cultural and religious suppression of ethnic minorities such as the Tibetans, the Taiwanese, and the Uighurs in western Muslim parts of China. It has increased persecution of Chinese Christians. It has increased harassment and harassment of dissidents and journalists and has maintained tight controls on freedom of speech and the Internet.

Earlier today I had the pleasure of meeting again with someone I worked with years ago, Wei Jingsheng. Wei Jingsheng, who is about 60 now, has been called the “father of Chinese democracy.” He spent 18 years in prison. He was an electrician at the Beijing Zoo. He spent 18 years in prison for the cause of freedom and democracy in his home country. He was jailed because the Chinese Government accused him of conspiring against it by writing about democracy. Since his release from prison for the second time, Wei Jingsheng this time was exiled to Canada. He has been a force for democratic change for his nation, founding the Overseas Chinese Democracy Coalition and the Wei Jingsheng Foundation. He has been nominated for the Nobel Peace Prize seven different times. He lives in Washington, the capital of our democracy, but he continues to fight for democracy in his home country.

The Chinese people, like Americans, are trying to live meaningful, peaceful lives and create a better world for their children. Unfortunately, they are held hostage by a brutal, one-party Communist totalitarian regime. This regime benefits from many of our country’s policies, from lax trade enforcement, from lax immigration enforcement in the face of blatant human rights abuses. The United States, by its acquiescence, has helped to prop up the Chinese Communist Party. The partner in working to prop up the Chinese Communist Party is large U.S. corporations.

Wei Jingsheng told me as we walked the halls of the House of Representatives in 1999 during the discussion and debate on the permanent normal trade relations with China, he looked me in the eye and he said the vanguard of the Communist past—revolution in the United States—the vanguard of the Chinese Communist party in the United States of America—is American CEOs. It was the American CEOs who walked the halls of Congress in 1989—our Presiding Officer remembers this—who walked the halls of Congress in 1989 lobbying on behalf of the Chinese Communist party dictatorship to get trade advantages to China. It was the CEOs of many of America’s largest corporations who walked from office to office in the Senate and in the House of Representatives begging Members of the House and Senate to vote to give trade advantages to this Communist party dictatorship that oppresses its people, that inflicted violence on those people in 1989, and has ever since. It was American CEOs who lobbied for trade advantages for China so that China, in the end, would take millions of jobs from the United States of America—from Gallion, OH, and Toledo, OH, and Akron and Youngstown and Dayton—hundreds of thousands of jobs in my State because American CEOs lobbied this House, this Senate, and lobbied the Congress down to the Hill to give trade advantages to the Communist party dictatorship in China. We have paid the price. The Chinese people have paid an even more important price.

I am proud to join with Senator Burr to introduce with Senator Hagan to be introducing with him a resolution acknowledging the 20th anniversary of the Tiananmen Square protest and crackdown. The resolution is simple. It honors those who died in the protest. It demands that China release its political and its religious prisoners. Today as we look back on the Tiananmen protest, we honor the lives of those who died in a struggle for freedom. Let’s remember that brave, unarmed protestors in front of the tanks who 20 years ago believed, like Wei Jingsheng believes, that one person can change the world through peace and nonviolence. Think what a whole nation could do.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll. Mr. BURR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BURR. Mr. President, I ask unanimous consent to be recognized for up to 30 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. BURR. Mr. President, when I yielded the floor to allow Senator Brown to speak, I was in the process of describing the amendment to the base bill, H.R. 1256. Before I go back to that, let me share with my colleagues the response to a letter from the Campaign For Tobacco-Free Kids. They assessed the substitute bill and they provided in a letter to the committee why they found the substitute to be wrong. I will use that word.

Let me take on some of the things they raised in that letter. They said that the Burr-Hagan bill would create a new bureaucracy that lacks the experience, expertise, and resources to effectively regulate tobacco products. I think I made it abundantly clear earlier today that upon our current regulatory framework for tobacco, every Federal agency in the United States has jurisdiction in it, except for the Food and Drug Administration. So to suggest that the Food and Drug Administration has the expertise or the resources to effectively regulate this would be disingenuous. They have no experience, because they haven’t been involved in regulation. They do have expertise, but expertise to prove safety and efficacy of products, not to conclude that a product is unsafe and kills. Yet they are not going to do anything to restrict its access or provide resources to effectively regulate tobacco products.

Incorporated in this base bill H.R. 1256 is, in fact, a surcharge on the tobacco industry of $700 million over the first 3 years to fund—to provide the resources—for the FDA to regulate the industry. And it doesn’t stop there, because once they can’t show that they can’t set up the regulation until they have the ability to do the surcharge it requires, in putting it in the FDA, that you come up with $200 million to fund the initial effort to set up the infrastructure to regulate this product. So, in fact, there were no resources. Within H.R. 1256, it creates the resources to create the framework, to create the personnel, to regulate a product they have never regulated before.

I remind my colleagues that in the substitute amendment, we set up a new Harm Reduction Center under the guidelines of the Secretary of Health and Human Services, within Health and Human Services, the same place that the FDA is. When we asked the Secretary of HHS how much does it take to fund that, they gave us a number of $100 million a year; $700 million for the baseline, H.R. 1256; $100 million for this new Center of Harm Reduction, overseen by the same Secretary of Health and Human Services.

Granted, I will be the first to say that if we are creating a new agency, the agency for harm reduction, it does not have the experience, the expertise, or the resources yet, but it can search within the global harm reduction to find the individuals, and the Secretary of HHS has already said $100 million will permit us to do that function in a harm reduction center. So the first complaint, hopefully, I have disposed of.

Second complaint from the Campaign For Tobacco-Free Kids as to why they would not support the substitute amendment: The Burr-Hagan bill does...
not give the FDA any meaningful authority to require changes in tobacco products. Well, I do hope somebody from Campaign For Tobacco-Free Kids is watching, because what the base bill, H.R. 1256, does is it locks in these products, nonfilter and the filtered cigarettes, and it legislates there cannot be changes to the products and this is the wrong decision by the FDA. You can’t do anything with these products. They are grandfathered. As you heard me say, H.R. 1256 does not allow these reduced-risk products to come to market. So the tobacco industry, and legislatures written, would basically limit tobacco uses to these two categories, the 100 percent risk and the 95 percent risk.

I misspoke. Let me correct it, because within H.R. 1256 it does state that any product that was sold prior to February 2007 could, in fact, be sold. Some, not all, smokeless products fall into that category of having been sold prior to February of 2007.

One has to ask: Why February of 2007? Why is that magic? It is very simple. That is the last time they updated this bill. I am sure they updated before the markup in 2009, but they weren’t even careful enough to change the effective date that cut off when a product could be sold. There can’t be any other reason, because there is nothing magical to February of 2007, except that U.S. smokeless products were included, and if you include U.S. smokeless products and filtered and nonfiltered, you might have the manufacturer that then controls about 70 percent of the market. And because you have grandfathered it all in and you have forbidden FDA from ever changing it, you have basically given an unbelievable market share to one company, and you have not allowed any other company in the world to participate because if they weren’t sold before February of 2007, they can’t be sold in the future. Because, as I discussed earlier, to bring a new product to the market, you have to make the claim that no nontobacco user would use the product.

Yet how can you make that claim if the same provision disallows you from talking to a non-tobacco user about whether they would use the product? It is a catch-22. Yes, we created a pathway, but we also designed it in a way that you couldn’t meet the threshold needed to have an application approved. It is very simple.

Two weeks that the Burr-Hagan bill doesn’t give the FDA meaningful authority to require changes in tobacco products. They are 100 percent correct. Nor does H.R. 1256. As a matter of fact, not only does it not allow for changes, it legislates there cannot be changes to products sold before 2007. If the Campaign for Tobacco-Free Kids is trying to reduce the risk of death and disease and usage, it has supported the wrong bill.

Third, the Burr-Hagan bill will harm public health because it perpetuates the consumers’ misconception that they can reduce their risk of disease by switching to so-called low-tar cigarettes. Our bill goes further than the Kennedy-Waxman legislation by banning the use of terms such as “light,” “ultra-light,” “medium,” and bans the use of candy, fruit, or alcohol descriptors on cigarettes even if not characterized in the legislation.

In addition, the risk reduction center is required to establish a relative risk ranking for tobacco and nicotine products and communicate that information to the public. This preempts any unsubstantiated lower or reduced-risk consumer communications by a tobacco manufacturer. In other words, under H.R. 1256, the FDA does not have to inform the public about the relative risk of the products they regulate. So they are not going to share with the people that if you smoke filtered cigarettes, it is a 100 percent risk, and unfiltered is a 90 percent risk. In the thinking of this committee, we require the harm reduction center to annually print a list of what the risks of the products are that are tobacco related and that they regulate.

The fourth complaint by the Campaign for Tobacco-Free Kids is that the Burr-Hagan bill doesn’t strengthen warning labels in a meaningful way. Well, actually, our bill incorporates the same warning labels for cigarettes contained in the Kennedy-Waxman legislation and requires they be placed on the bottom 30 percent of a cigarette package, including Senator Enzi’s graphic warning label language. Also, our amendment goes further than H.R. 1256 to require singage of ingredients on the back facing of a tobacco product packaging.

Let me state what the claim was: The Burr-Hagan bill doesn’t strengthen warning labels. The only thing I can say is that the Campaign for Tobacco-Free Kids didn’t read my bill or it doesn’t know the difference between identical language in H.R. 1256 and the Burr-Hagan substitute because the wording is actually the same. In addition, we require ingredients in those products be listed on the pack, which I think is beneficial to consumer choice.

Fifth, the Burr-Hagan bill doesn’t adequately protect consumers from misleading health claims about tobacco products. Well, once again, our bill requires the same rigorous standards used in H.R. 1256 for reducing the risk of tobacco products. Furthermore, it requires the risk reduction center to establish and publish the relative risk of tobacco and nicotine products on an annual basis. Unlike Kennedy-Waxman, this legislation also requires disclosure on individual packs of all ingredients.

The sixth complaint by the Campaign for Tobacco-Free Kids is that the Burr-Hagan bill gives the tobacco industry license to create ways to market to youth. We have covered this. Our bill is much more comprehensive. It eliminates print advertising. There are marketing prohibitions and restrictions over and above what H.R. 1256 does.

Last, the bill gives the tobacco industry undue influence and creates gridlock on an important scientific advisory committee by giving the tobacco industry the same number of voting representatives as health professionals and scientists—a 19-member board with 10 representatives of the general public, 2 representatives of tobacco manufacturing, 1 representative of small tobacco manufacturing, 1 representative of the tobacco growers, and 1 expert on illicit trade of tobacco products. Somewhat, 14 health care experts and 1 trade expert can be depicted by the Campaign for Tobacco-Free Kids as being the same number as 4 tobacco-related members of the advisory board. So clearly, 15 without a tie to tobacco, 4 with a remote tie to tobacco, and the Campaign for Tobacco-Free Kids said that by giving the tobacco industry the same number of voting representatives as health care professionals and scientists—Mr. President, the American people deserve an honest debate. They deserve the informed side of a bill or another to be factual. I am not sure how you can look at 15 individuals in one category and 4 in another and portray for a minute that is the same number. But that is what the Campaign for Tobacco-Free Kids does. If, in fact, they have misled in the letter to the committee about H.R. 1256 and the substitute, what else haven’t they told us or what else have they told us that is not accurate? It brings into question the integrity and, once again, the effort is not to reduce the risk of disease or use of tobacco products.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 16 minutes.

Mr. BURR. When I ended talking about the substitute, I held up this can of Camel Orbs and I told the Members of the Senate that this was a product that currently is rated at a 1 percent risk, or an 89 percent reduction from typical nonfiltered cigarettes. It is an 89 percent reduction from nonfiltered cigarettes. I will hold one up. It is a dissolvable tobacco. You don’t get lung cancer or COPD from it, and it doesn’t cause heart disease. There is a 1 percent risk. But under H.R. 1256, this product is outlawed. Why? Because it wasn’t sold before February 2007.

Let me say to my colleagues, if the intent of passing FWP is to lock on an important scientific advisory committee by giving the tobacco industry—and I am supportive of it—is to reduce death and disease, why would you exclude a product that has a 1 percent risk but then grandfather in products with a 100 percent likelihood of killing you? Even if you are not debating whether it is in the FDA or in the harm reduction center, how in the world can a Member of the Senate say it is OK to eliminate the ability for an adult to choose to use this and to be locked into a certain decision?

We are supposed to pass policy that makes sense and that works for the American people, that actually reduces
the risk of death, disease, and usage of tobacco. When you lock them into the highest risk and likelihood of death, you haven’t fulfilled that. When you don’t require States to use the money they were given for cessation programs, how can you expect that you are going to reduce youth usage? When you see that 48 States have a higher prevalence of marijuana use among youth than they do of tobacco, how can you conclude that by giving the FDA jurisdiction to regulate tobacco, somehow we are going to have a reduction in youth usage? It is just not going to happen.

The American Association of Public Health Physicians states that this product, Orbs, is the most effective way to fight death and disease associated with current tobacco use. Again, the American Association of Public Health Physicians states that these are the best tools we have to get people to quit smoking. As a matter of fact, I am proud to say that yesterday I read the American Association of Public Health Physicians endorsed the substitute amendment and not the base bill because they recognize that the base bill does nothing but provide a pathway to certain death and disease.

Just so I am clear, under the base bill, H.R. 1256, Marlboro is cemented on the retail shelves. Camel Orbs, which reduces death and disease associated with tobacco use, is banned, can’t be sold; the market mark January 2007, and Marlboros are on the shelf.

Snus is banned. In the past 25 years, Swedish men showed a notable reduction in smoking-related disease, a decline in lung cancer incidence rates to the lowest of any developed nation, with no detectable increase in the oral cancer rate, improvement in cardiovascular health, and the tobacco-related mortality rate in Sweden among the lowest in the developed world. But in our infinite wisdom in this austere body, we are getting ready to pass a bill that takes a product that Sweden used to get people off cigarettes, to reduce lung cancer, to bring down cardiovascular disease, to reduce mortality by tobacco products, and we are going to eliminate it and we are going to lock them into everything Sweden is trying to get rid of. Think about this before you do it, for God’s sake. Once you pass this, it is too late.

Mr. President, if the current cessation programs don’t work. I said earlier that those products have a 95-percent failure rate. Giving current smokers an opportunity to migrate to a less harmful product—it is a public health initiative, and not creating a pathway to reduce harmful products is not a public health bill. But those products are banned in H.R. 1256.

Senator HAGAN’s and my amendment allows those products to be marketed and regulated. Our amendment establishes a tobacco harm reduction center within the office of Health and Human Services. We provide the

harm reduction center with the regulatory authority to better protect our children from tobacco use and significantly increase the public health benefits of tobacco regulation. We require tobacco manufacturers to publish ingredients of products. We require the harm reduction center to rank tobacco products according to their risk of death and disease associated with each type of tobacco product in order to inform the American public more fully about the risk and harm of tobacco products.

We ban candy and fruit descriptors of cigarettes. We ban the use of the terms “light” and “low tar.” We give the Harm Reduction Center the authority to review smoking articles and adjust accordingly to what is in the best interest of public health. What we don’t do is give an already overburdened agency the responsibility to regulate tobacco.

We have a change in administrations. As supportive as we were of the new Commissioner of the FDA, Margaret Hamburg—she will do a wonderful job—let me turn to the former Commissioner of the FDA. Two years ago, Andy von Eschenbach gave his opinion on the FDA regulation of tobacco. You might say this was 2 years ago. I think I already made a credible case that most of what is in this bill was written 10 years ago. Even some of the deadlines that are in the bill have not been changed since the bill was updated 2 years ago. So I am very credible to use the comments of the former FDA Commissioner 2 years ago:

The provisions in this bill would require substantial resources, and FDA may not be in a position to meet all of the activities within the proposed user fee levels. As a consequence of this, FDA may have to divert funds from other programs, such as addressing the safety of drugs and food, to begin implementing this program.

All of a sudden, we are right back where I started 3 days ago. Why in the world would we jeopardize the gold standard of the Food and Drug Administration, the agency that provides the confidence to every consumer in the country that when they get home at night, after having a prescription filled, they don’t have to worry about whether it is safe or effective; that if they go to a doctor or hospital and they use a device on them, it wasn’t something crafted in the back room and nobody reviewed that it was safe or effective; that it had the gold standard, the seal of approval of the Food and Drug Administration; that as biologics were created that did not exist 10 years ago, that were not something crafted in the back room, and nobody reviewed that it was safe or effective; that the FDA looked at this new product and approved it for use in humans; that when we went to buy food, our food would be safe.

Do we want to jeopardize the FDA having to divert funds from other safety programs—that this was not a bill where one side or the other had an agenda that the threshold was come to the Senate floor and to spend as much time as it took to convince my colleagues—Republicans and Democrats and Independents—that this was not a bill where one party or the other got what they wanted?

Senator HAGAN is a Democrat; I am a Republican. We have come to the floor passionately with our substitute amendment because we think it trumps H.R. 1256 from a policy standpoint. The American people expect us to pass the right policy, not any policy. If the FDA is not the appropriate place to put it, the American people expect us to find something else that meets the threshold of the right regulation but does not encumber the gold standard of an agency on which we are so reliant.

I am hopeful we are going to have a vote this afternoon on the substitute. It will be next week before the base bill is voted on. I say to my colleagues, they are only going to have one opportunity to change this bill. That one opportunity is to vote for the substitute amendment. If they vote for the substitute amendment, they are going to vote for a bill that actually reduces the risk of death and disease of those who choose to use tobacco products. If they vote for the substitute, they are actually going to vote for a bill that actually reduces youth usage in a real way. If they pass on supporting the substitute—and it will be a close vote—if they pass on supporting it, they are going to have to live with what they do to the FDA. They are going to have to live with the consequences.

When I came to the Congress, the House of Representatives, in 1995, I was right now wondering why had Americans who have been killed? Do we want a reviewer at FDA, whose gold standard is to prove safety and efficacy on all the products they regulate, except for the tobacco, to lower their guard and let something through that did not meet the threshold of safe and effective? I am not sure that is in the best interest of America. I am not sure it is in the best interest of the American people.

My colleague from Connecticut came to the floor and said the Food and Drug Administration is the only agency that has the experience, the expertise, and the resources. The Commissioner of the Food and Drug Administration said: I don’t have the resources, and if you give this to me, I might have to divert funds from other programs. As a matter of fact, they would have to divert people from reviewing the applications for new drugs, new biologics. It could be that somebody who is waiting for a new therapy dies before the therapy is available because we had to divert funds or people to take care of regulating a product that the FDA has determined that the food and drug commissioners of the FDA told us they did not have the funds.

I am not sure how clear we need this. I said when I started on Monday this was an uphill climb. There was no opposition against moving the threshold was come to the Senate floor and to spend as much time as it took to convince my colleagues—Republicans and Democrats and Independents—that this was not a bill where one party or the other got what they wanted.

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produce a bill. It was a bipartisan bill. As a matter of fact, I think in the Senate and in the House it passed by voice vote.

Why did it take 2½ years, two Congresses? Is it because we understood, at that time, the delicacy of what we were attempting? Was it because we were attempting to modernize the Agency and to maintain the gold standard.

At the end of the day, no Member of the House or the Senate offered an amendment to give the FDA jurisdiction over tobacco. In 1998, that bill became law. Why didn’t they? It is because every Member knew it was not worth the risk of giving them the responsibilities of tobacco when we had spent 2½ years trying to protect the gold standard.

We are not that forgetful. Don’t forget our commitment to make sure the gold standard of the FDA is intact. Don’t jeopardize it by giving them tobacco. Don’t let our kids be sold short by producing a bill that does not do the education they need so they never pick up a tobacco product. Don’t lock the adults who choose to use risky products to risky products forever. Give them an opportunity to have less harmful products. That can only be done one way. That can only be done if Members of the Senate vote to support the Hagan-Burr substitute.

It does keep kids from smoking. It does preserve the core mission of the FDA. It does reduce the risk of death and disease. I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I rise in support of the Family Smoking Prevention and Tobacco Control Act. We all know someone who is currently a smoker or someone who has been a smoker. I know we all worry about their health. That is with good reason.

Tobacco is the leading preventable cause of death in the United States. It kills more people each year than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

Let me repeat that because it is hard to believe. The fact is, tobacco use kills more people each year than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined. Tobacco-related health problems affect millions, more, resulting in skyrocketing health care costs every year.

The cycle of addiction is so hard to break, and the tobacco companies work hard to attract smokers with flashy marketing campaigns and by including chemicals that are proven to be addictive. Undoubtedly, this hurts our Nation’s overall health.

There is no question that one of the most important steps the Senate can take to improve health and to reduce costs is to reduce the use of tobacco. That is why this legislation is so important. Why I am proud to be one of the 53 cosponsors of this legislation. Again, over half the Senate is cosponsoring this legislation.

I thank Senator KENNEDY for his leadership and work on this important issue over so many years. I thank Senator DODD for managing this bill on the floor.

Throughout my career, I have advocated prevention. We all realize the cost to lives and in health care expenses that smoking creates, not only to the consumer but also to those who are exposed to the dangerous secondhand smoke.

In New Hampshire, almost 20 percent of adults smoke cigarettes, and tobacco-related health care expenses in New Hampshire amount to $969 million a year.

During my tenure as Governor, I was proud to sign legislation that banned the sale of tobacco products to minors, that prohibited the possession of tobacco products by children, and that required the New Hampshire Department of Health and Human Services to disclose harmful ingredients in tobacco products.

The important legislation we are considering expands on what New Hampshire has done. It will give the FDA the authority to regulate the manufacturing, marketing, and sale of tobacco products.

In New Hampshire this year alone, 6,300 children will try cigarettes for the first time. Just over a third of these children will become addicted lifelong smokers. The tobacco companies know the message that much of their marketing to this vulnerable population. In fact, published research studies have found that children are three times more sensitive to tobacco advertising than adults and are more likely to be influenced to smoke by marketing than by peer pressure. This year in New Hampshire alone, the tobacco companies will spend $128 million on marketing, much of it geared to kids.

Tobacco companies also attract children to their products by using flavors, such as Twista Lime or Kauai Kolada, which says it contains “Hawaiian hints of pineapple and coconut,” or Winter Mocha Mint. It doesn’t sound like we are talking about tar-filled cigarettes, does it? It sounds like we are talking about ice cream or candy. But, unfortunately, these fruit and mint flavors not only entice kids to try them but also makes the smoke less harsh, more flavorful so it is actually easier for kids to smoke.

Unfortunately, they do not make cigarettes less dangerous or less addictive. The tobacco companies do not stop at just the flavors to attract kids. They package the flavored products in colorful and fun patterns clearly aimed at attracting children to their products.

Norma Gecks of Derry, NH, reports that her youngest child is 19 and is addicted to smoking. He says the mint-flavored and fruit-flavored products, and by now is smoking up to two packs a day. Already at age 19, he has developed a smoker’s cough.

Keith Blessington of Concord is now an adult, but he is also a victim of childhood addiction. He smoked his first cigarette after a basketball game when he was only 17. Recently, he was diagnosed with advanced stomach cancer and told me he has about a year to live.

Despite this, despite the fact that he has cancer, he will tell you plainly: I am addicted. He cannot quit.

We need to enact this legislation to help people in New Hampshire and across the country such as Keith, people such as Norma’s son. Tobacco products and marketing geared to kids need to end. We cannot afford to let another generation of young people put themselves at risk by becoming addicted to tobacco products and suffering the lifelong consequences of their addiction or, even worse, dying.

For decades, tobacco companies have targeted women and girls. But in the last 2 years, the industry has significantly stepped up its marketing efforts aimed at our daughters and granddaughters, and we have a picture of one of the ads R.J. Reynolds uses. It is their new version of Camel cigarettes targeted to girls and women, and it is also Camel No. 9—sort of a takeoff on some other product descriptions we have heard. This cigarette has sleek, shiny black packaging, flowery ads, and, as you can see, the enticing slogan “light and luscious.” This advertisement has appeared in Cosmopolitan, Glamour, Instyle, Lucky, and in a Glamour magazine, and it has been effective.

Today, about 17 percent of adult women and about 19 percent of high school girls are smokers. That is more than 20 million women and more than 1½ million girls who are at increased risk for lung cancer, for heart attacks, strokes, emphysema, and other deadly diseases. These statistics are staggering, and it is important to remember they represent mothers, grandmothers, aunts, sisters, colleagues, and friends.

Seventeen-year-old Cait Steward of Dover, NH, has seen these Camel No. 9 advertisements. She saw them in Glamour magazine. But fortunately, she sees through the marketing campaign. She says:

Tobacco companies advertise to try and get me and my friends to smoke. They try to make young girls think that smoking is interesting, glamorous, and cool. They try to entice them to try the products, to make them believe that if they get us to start smoking now we will be addicted for years to come.

It is not just cigarettes that we are attempting to regulate in this legislation. The tobacco companies have also developed new products that are both smokeless and spitless. They are just as addictive as those products you smoke, however, and they are just as deadly. Like cigarettes, they do not have any FDA regulation, and the consequences are dire.

I want to show a photo of a young man named Gruen Von Behrens. He is an oral cancer survivor. He has had more than 40 surgeries to save his life,
I raise all that because at the end of the Bush administration, they took North Korea off the terrorism list, and they did it as a way to try to negotiate, to try to get them into the six-party talks to do more things and to work with us and with the world community. The Bush administration never, during the time that the North Korean Government has taken the exact opposite tack. Instead of working with us, they have done everything they can to provoke us even further. President Bush, when he took North Korea off the terrorism list, did it anyway. Then Candidate Obama said, at roughly that same period:

Sanctions are a critical part of our leverage to bring these countries to the negotiating table. They should only be lifted based on North Korean performance. If the North Koreans do not meet their obligations, we should move quickly to re impose sanctions that have been waived, and consider new restrictions going forward.

Since President Bush said that, since Candidate Obama said that, here is what the North Korean regime has done. I don't want to go into detail, but I will go into detail. They have: launched a multistage ballistic missile over Japan; kidnapped and imprisoned two American journalists; pulled out of the six-party talks, vowing never to return; stolen American nuclear inspectors and American monitors; re-started their nuclear facilities; renounced the 50-year armistice with South Korea; detonated a second illegal nuclear bomb; launched additional short-range missiles; are about to launch a long-range missile capable of reaching the United States; and, at this very moment, are calling the detained American journalists, Laura Ling and Euna Lee, before a North Korean court, if you could even call it a court. It is a very unstable, very provocative situation in North Korea.

I urge the majority leader and those working on coming up with an agreement to go to the next bill to allow us to vote on this North Korean amendment. We want to put forward an amendment on this bill or on some future bill—but I would like to do it and we should do it on this bill—to label North Korea a terrorist state again, like President Bush said we should, if they don't act right; like Candidate Obama said we should, if they don't fulfill their obligations. We think the administration should do this now, should re-list them as a terrorist state. We think it would be an important vote and statement by this body if we would say the North Korean Government is a terrorist government because it is. It is one of the lead arms to provide armament to regime and individuals around the world. Some of my colleagues may have seen the story this week about a North Korean general who was one of the lead counterfeiters in the world of United States one hundred dollar bills. They were very good quality, done on state machinery I have heard. He is one of the lead counterfeiters around the world.
FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. REID. Madam President, there are a number of amendments that have been filed that are at the desk. They haven’t been offered as yet. Amendments on both sides in agreement should be considered. We were very close to an agreement to do just that. The vast majority of the amendments will be germane postcloture. I have indicated that for those that are arguably germane, I would be willing to work with the person who offered the amendment to have a vote on it. But one Senator has held this up. That is the way things can happen around here. It is unfortunate, but it does happen. We worked for a couple of days trying to arrive at the point we are. The same about it is the Senator who has held all this up has an amendment that isn’t remotely germane to this bill, but he has lodged an objection to this agreement that is agreed upon by all other Senators. I would hope that the Senator would reconsider this objection over the next few days.

In the meantime, I have had conversations with the managers of the bill. I think a lot of time has been used in Senator Dodd. It is an important piece of legislation. I watched the Presiding Officer offer her speech today. What a sad thing, the man she spoke about. A picture is worth a thousand words. The picture that she had when she was talking about this bill and how important it is was worth more than a thousand words.

I will have more to say about this on Monday. Quite a few in my family smokes. Sadly, my parents are dead. My dad’s miner’s consumption was terribly exacerbated by his smoking. So when did he start smoking? He was a kid. He started smoking as a little boy. The same with my mother. The same with all of my brothers and sisters. I remember I had a friend who learned that my brother chewed tobacco. He was a lobbyist for the tobacco industry and he said, Oh, I will send him a case of—what kind does he chew? I didn’t think that was a good thing.

In Los Angeles last week I met the first lawyer who filed litigation, serious litigation against the tobacco industry—a wonderful man. He got terribly upset with the Joe Camel advertisements, when they placed that little comic strip character on lunch boxes for kids. He also was upset because at that time the tobacco industry went through another one of their ideas to get kids to start smoking in stores, like a 7-Eleven store. They would have bins out there. You put them in there. You put supposed to pay for them, but they were there. Kids could steal them so easily. So he filed this lawsuit. He had the confidence to tell me he lost that lawsuit. But when all the lawyers got together to go after the tobacco companies big time, they pooled their money and went after the tobacco companies, and they used all of his pleadings. He said even the misspelled words they used. They didn’t change anything. Ultimately, that led to the favorable ruling by the courts that tobacco companies were liable for the damages in the billions of dollars. It is important we move forward. I hope that cloture would be invoked on this Monday afternoon. It is one of the most popular pieces of legislation we could do. I am sorry we weren’t able to work anything out on the amendments, but we simply were not able to do so. No one can complain this entire Congress that we haven’t had the ability to offer amendments.

We were consulted for a lot of reasons. One is we have the supplemental appropriations bill floating around here and we didn’t have the germane amendments on this, but there were no restrictions whatsoever on even non-germane amendments. We just wanted—every Republican wanted to look at ours; we wanted to look at theirs. We simply believe we can still do that. But no one can complain and use it as an excuse to not vote for this bill, that we haven’t given them a chance to offer amendments.

So I hope Senators will take a look at this today and help us invoke cloture and complete this legislation. I have already indicated I would be happy to work out something that would be fair to dispose of the amendments that are germane to this bill that have been filed.

THE PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I wanted to begin by thanking the majority leader for his efforts and those of others, with him. We are prepared to debate these germane amendments, or amendments that are arguably germane, and it is regrettable we couldn’t do that. This bill has enjoyed overwhelming support in both Chambers in previous Congresses. Our colleagues from Massachusetts has been the leading champion of this effort for more than a decade, if not longer. As I pointed out, every single day we fail to act on this legislation, the statistics are that 4,000 people will begin to smoke every day; 400,000 of our fellow citizens will die this year, not to mention thousands who will live very, very debilitated lives as a result of being contaminated by cigarette smoke and tobacco products. Here we are on the eve of a national health care debate where a major part of that will be about prevention, and what better way to begin that debate than the Congress taking a step in this area which could make such a difference.

So I thank the majority leader for his efforts. I am still hopeful we can get this done. I believe we can. People such as Senator Burr and Senator Hagan who have legitimate interests and concerns about the legislation before us deserve to have their amendments considered, debated, and discussed. In fairness to other Members, it is regrettable that one single Member of this body, on a totally nongermane proposal, can cause us to delay or avoid meeting the obligation of the issues and concerns about tobacco and the effects on our citizens.

So I thank the majority leader for his efforts. We will be here next week to debate those amendments and hopefully our colleagues will invoke cloture so we can get to this matter.

Mr. REID. Madam President, let me say while the distinguished Senator from Connecticut is on the floor, the chairman of the Banking Committee and the manager of this bill, Senator Enzi has been a real partner in what we have done here. He asked that we do a committee hearing on this bill. We could have brought it to the floor under rule XIV. This bill has had lots of hearings in the past, but because Senator Enzi is such a gentleman and I thought it would be the right thing to do, we went ahead, in spite of a very difficult schedule that we had and the schedule that especially Senator Dodd had, of all of the things that we were doing under the jurisdiction of that Banking Committee, but with Senator Kennedy’s help, he was the one who was obligated to do this legislation. So we have done that. We have jumped through all the hoops. I repeat, I hope no one will use that as an excuse to not vote for cloture that we need in order for the bill to move forward on this bill, because it would be unfair for them to say that we have been unfair.

Madam President, I ask unanimous consent to terminate routine business and have the bill reported.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1256, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes.

Pending:
Dodd amendment No. 1247, in the nature of a substitute.
Burr/Hagan amendment No. 1246 to amendment No. 1247, in the nature of a substitute.
Schumer for Lieberman amendment No. 1245 to amendment No. 1247, to modify provisions relating to Federal employees retirement.
June 4, 2009

The PRESIDING OFFICER. The majority leader is recognized.

CLUTCH MOTION

Mr. REID. Madam President, I send a clutch motion on the Dodd substitute amendment to the desk.

The PRESIDING OFFICER. The clutch motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLUTCH MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Dodd substitute amendment No. 1247 to Calendar No. 47, H.R. 1296, Family Smoking Prevention and Tobacco Control Act.

Harry Reid, Christopher J. Dodd, Robert P. Casey, Jr., Benjamin L. Cardin, Blanche Lincoln, Patty Murray, Ron Wyden, Jack Reed, Sheldon Whitehouse, Maria Cantwell, Roland W. Burris, Tom Harkin, Sherrod Brown, Debbie Stabenow, Richard Durbin, Mark Udall, Edward E. Kaufman.

Mr. REID. Madam President, I send a clutch motion to the desk. This is on the bill itself.

The PRESIDING OFFICER. The clutch motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLUTCH MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Calendar No. 47, H.R. 1296, Family Smoking Prevention and Tobacco Control Act.

Harry Reid, Christopher J. Dodd, Robert P. Casey, Jr., Debbie Stabenow, Blanche L. Lincoln, Patty Murray, Ron Wyden, Jack Reed, Sheldon Whitehouse, Maria Cantwell, Roland W. Burris, Richard Durbin, Mark Udall, Edward E. Kaufman, Ben L. Cardin, Bill Nelson.

Mr. REID. Madam President, I now ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

Mr. REID. Madam President, I ask unanimous consent to go into a period of morning business, with Senators permitted to speak for up to 10 minutes each.

Mr. MCCAIN. Mr. President, I am glad to have the opportunity to speak on this matter.

Mr. REID. Madam President, I have an amendment that I have been trying to get a vote on. I would say to the distinguished majority leader, and it certainly is important to the American people.

It is certainly important on this bill and the function of the FDA concerning the importation of prescription drugs into this country. I believe the Senator from North Dakota has an amendment. I would agree to a time agreement of an hour to be equally divided, or half hour, and then vote on it.

I think the American people ought to know whether we are going to be able to import prescription drugs into this country so we can save them billions of dollars every year, rather than taking so much of their hard-earned money, especially retirees.

Mr. REID. Madam President, I am happy to respond to my friend. We have been trying for 2 days to move forward on germane amendments. I have had several conversations with Senator DORGAN. I know how important it is to him. I voted with him, and I do every this matter comes up. As I indicated earlier, I would be happy to work out some kind of agreement.

At this time, until we get some ability to vote on the germane amendments, it doesn’t seem like the right thing to do to keep this bill going. As I have indicated to my friend, Senator DORGAN, to work out an arrangement for him to offer this amendment. This is something that should have been done. I am sorry to say, years ago, not weeks ago. I will be a Senator from Arizona on this drug reimportation issue, which is important. At this stage, we simply cannot do it; I know of no way to get from here to there.

As I said—and the manager of the bill is here—if we can work something out by Monday, I will be happy to try to work something out. Nobody is trying to stop the Senator from offering that amendment. We have to have an agreement to move forward on the other stuff first because it is germane.

Mr. MCCAIN. Will the Senator yield? Mr. REID. Yes, without losing my right to the floor.

Mr. MCCAIN. Mr. President, I am very appreciative of the difficulties the majority leader faces on a bill of this nature, the challenges of amendments being nongermane, and also the difficulties he faces in managing legislation. This issue has been around for a long time, I say to my friend from Nevada. We should address it. It is important to the American people. It does have a lot to do with pharmaceuticals in this country and the availability.

Again, I point out to the majority leader that there should not be a lot of debate on this. People have taken their positions.

I have an e-mail that was sent to us by mistake by the lobby for PhRMA, regarding how important it is to stop this amendment and not have a vote on it. If my friend will indulge me, this is urgent. This is from, as I understand it, one of the lobbyists for PhRMA:

The Senate is on the tobacco bill today. Unless we get some significant movement, the full-blown tobacco or Vitter bill will pass as an amendment and a Cochran or Brownback safety amendment will fail.

(1) We need to locate a Democratic lead co-sponsor for the amendment which will be either BROWNBACK or COCHRAN.

(2) We are trying to get Senator DORGAN to back down—calling the White House and Senator REID. Our understanding is that at least Senator McCASKEY has said he will offer regardless, so even if DORGAN withdraws, he may still go forward.

We believe we have 39 ‘yes’ votes for a safety second degree amendment and 25 members in the ‘undecided’ column. KENNEDY—who wrapped this for us last time—is not here.

We are scheduling a call for later this morning to follow up on our targets from yesterday’s whip call. Please make sure your staff is fully engaged in this process. This is real. We only had six companies participate in the last call.

My friends, that is a little insight as to how the special interests in Washington work. I would like to have a vote on this amendment, I say to my friend from Nevada, with a full appreciation of the difficulties he has in getting this legislation through—a very important piece of legislation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 132, the nomination of William Sessions to be Chair of the U.S. Sentencing Commission.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Madam President, we have not had an opportunity to get that cleared on this side. Therefore, I object.

The PRESIDING OFFICER. Objec- tion is upheld.

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider the nomination of Robert Groves to be Director of the Census.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Madam President, I make the same observation with regard to this nominee. We have not yet
been able to clear it on this side. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

ORDER OF BUSINESS

Mr. REID. Madam President, for the information of Senators, there will be no more votes today. I indicated earlier that we would be out by 6 today. A number of things are going on. We will work on a number of issues over the weekend, including the tobacco issue and other issues. We will vote on Monday at 5:30 on the cloture motions that were filed earlier this afternoon.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. DODD. Madam President, I listened carefully to the conversation between the majority leader and our colleagues from Arizona. As the manager of this bill on smoking, I for one have been a strong advocate for the reimportation proposal. Others have also expressed interest in this. Most of my colleagues have expressed views, and a majority have expressed support for the idea. This is not about denying a vote on reimportation. We would all like that opportunity.

However, this bill on smoking and children is about as fragile a proposal as I have seen here in a long time. There are strong voices that wish to kill this legislation, and they effectively have. The FDA has jurisdiction over almost every product—except tobacco—including pet food. We waited 10 years trying to get to this bill. If you lose one or two votes on this—if we lose this again, we are back to the last decade.

There will be any number of attractive ideas proposed to this legislation, many of which I have either supported or would like to, but we will run the risk of breaking up the necessary 60 votes to deal with children and smoking. So no matter how appealing some amendments may be, understand what you may be doing, and that is destroying the ability to deal with the 3,000 to 4,000 kids who start smoking every day and the 400,000 people who die every year from tobacco. I want to vote on reimportation as well and a lot of other issues. If every time we bring up a bill of this significance and somebody offers a very appealing proposal—understand that the danger is that you fracture that relationship. That has denied us the opportunity to pass this for a decade, despite the fact that both bodies have voted overwhelmingly but not in the same Congress.

We are on the brink of getting this done. What better thing could we accomplish on the eve of the health care debate and saving the lives of our children? I have 76,000 kids in Connecticut who will die because they are smokers if we do nothing. There are 6 million children today who are going to die prematurely because of smoking if we do nothing. As much as I want to deal with reimportation of drugs, if we do that and it is adopted and we lose the coalition on smoking, what have we achieved? The bill dies. You lose both reimportation as well as the smoking proposal.

I appreciate the majority leader talking the position he did. I know where he stands on the issue. Senator REID has been a strong supporter of reimportation. That is not the issue here. It is whether at long last, a decade later, our colleague from Massachusetts, Senator KENNEDY, and Senator DeWine, a former colleague from Ohio, Henry Waxman from California, Tom Davis of Virginia, who on a bipartisan basis have tried year in and year out to get this done—we can finally achieve it. So I know the game. But this is not a game, this is life and death for people. For 10 long years, we have not been able to pass involving kids and smoking. We can get it done in the next few days. If people insist upon nongermane amendments based on a short-term appeal that denies us that opportunity, we will have done great damage to our country.

I appreciate the position the majority leader has taken. My colleagues know, because I went through the process last week in committee, there were any number of appealing amendments. I thank the members of the committee who wanted to vote for some of those amendments. I see Senator MERKLEY here, a member of our committee. He and I would have liked to have supported additional amendments, fines and such, for kids. We knew that if we did that, we might break that fragile coalition that would get us the goal line of passing the bill.

I thank the majority leader for standing up on an issue he cares deeply about, the health of kids. He understands, as does the Presiding Officer, as do all of us here who have loved ones who have been smokers and have been affected by tobacco and the damage it does to our citizenry. It is the only disease I know that is self inflicted. There are more deaths each year as a result of smoking and tobacco products than alcohol, drugs, suicide, automobile accidents, and AIDS combined. It is the greatest killer in America. We have a chance to make a difference. The day will come for reimportation. We ought to get to that. If you do it on this bill, you lose both reimportation and the smoking bill.

I thank the majority leader and yield the floor.

Mrs. BOXER. Madam President, I urge my colleagues to join me in support of the Family Smoking Prevention and Tobacco Control Act, a comprehensive effort to address the threat of tobacco products on children.

This bill will finally give the Food and Drug Administration the legal authority it needs to prevent the sale of tobacco products to minors, make tobacco products less toxic and addictive for those who continue to use them, and prevent the tobacco industry from misleading the public about the dangers of smoking.

As the leading preventable cause of death in the United States, tobacco use kills over 400,000 Americans a year. More deaths in the U.S. are caused by tobacco use than from illegal drug use, alcohol use, motor vehicle accidents, suicides, and murders combined. This legislation takes crucial steps to save the lives of as many as 80,000 Americans every year.

Sadly, our failure to address this issue is having the greatest effect on our Nation's children. Ninety percent of all new smokers are children. In just 1 day, about 3,500 children will try their first cigarette and 1,000 more will become daily smokers. In just 1 year, kids in my home State of California will purchase 78.3 million packs of cigarettes.

Even though studies have shown children are twice as sensitive to tobacco advertising as adults and that one-third of children experiment with smoking due to advertising, marketing for tobacco products is virtually unregulated. Each year, the tobacco industry spends $13.4 billion nationwide on advertising. Granting the FDA the authority to regulate tobacco advertising will reduce targeting of kids and crack down on false claims.

Additionally, this bill will grant the FDA the authority to regulate smokeless tobacco—particularly those products that have been designed to appeal to children, such as tobacco candy. Claims by the tobacco industry that these products are safe alternatives to smoking are dangerous and wrong. In fact, the Surgeon General has determined the use of smokeless tobacco can lead to oral cancer, gum disease, heart attacks, heart disease, cancer of the esophagus, and cancer of the stomach.

This legislation will ensure that tobacco companies can no longer market addictive carcinogenic candies targeted at children without review by the Food and Drug Administration and careful regulation to safeguard the public health.

Cigarettes contain 69 known carcinogens and hundreds of other ingredients that contribute to the risk of heart disease, lung disease, and other serious illnesses. Yet tobacco products are currently exempt from basic consumer protections like ingredient disclosure, product testing and marketing restrictions to children. Tobacco products are the only products on the market that kill a third of their customers if they are used as directed. In spite of the risks, in spite of the costs, tobacco products are the most widely sold consumer products available today.

This bill will ensure that the tobacco industry is finally required to tell us what is in the products they sell.
This legislation will also give the Food and Drug Administration the authority to require stronger warning labels, prevent industry misrepresentations, and regulate ‘reduced harm’ claims about tobacco products. According to the Center for Howard School of Public Health study, the average amount of nicotine in cigarettes rose 11.8 percent from 1997 to 2005. More important, this bill will give the FDA the authority to ban the most harmful chemicals used in tobacco products, or even reduce the amount of nicotine. The Family Smoking Prevention and Tobacco Control Act is not about unfairly punishing tobacco companies or consumers of tobacco products; it merely gives the Food and Drug Administration the right to regulate tobacco products as it regulates other products to safeguard the public health.

This Congress and the President have committed to reducing health care costs and achieving comprehensive reform. This legislation is precisely the kind of investment in prevention and wellness that will enable us to increase access to quality health care while reducing costs. Tobacco use results in $96 billion in annual health care costs and, in California alone will spend $91 billion on smoking related health care costs—imagine if we spent those funds on preventative medicine or wellness measures.

The passage of this bipartisan bill would be one of the single, greatest public health protections that affirms our commitment to prevention and wellness as the foundation of responsible health care. I urge my colleagues to make an investment in the health of the American people and support this legislation.

Mr. HATCH. Madam President, I rise today to share my views on S. 1256, the Family Smoking Prevention and Tobacco Control Act of 2009.

First and foremost, I want to make it perfectly clear that I am deeply concerned about the dangers of smoking, particularly to children and teenagers. We must do everything we can to discourage our youth from using tobacco products; because once they start, it is very difficult to stop.

Long term use of tobacco causes serious health conditions such as lung cancer, emphysema, or COPD—Chronic Obstructive Pulmonary Disease. There is no question that tobacco is a killer.

And not only does tobacco kill, it also results in a tremendous amount of unnecessary health care costs. Experts believe tobacco costs society billions of dollars each year. Even second-hand tobacco smoke harms those who do not smoke themselves but are merely around them, just as food.

Do I believe that tobacco should be regulated? Of course I do. But do I believe that the Food and Drug Administration is the appropriate agency to regulate tobacco? Absolutely not. Let me take a few minutes to explain why I feel so strongly about this issue.

The FDA’s core mission is to promote and protect public health. As a member and former chairman of the Senate Health, Education, Labor and Pensions Committee, the committee with jurisdiction over the Food, Drug and Cosmetic Act, I feel very strongly that the FDA should have sufficient resources to do its current job before taking on new responsibilities. Over the years, I have worked hard to get the FDA the funding it needs to protect consumer health; approve new drugs, biologics and medical devices; and protect our Nation’s food supply.

For years, I have pleaded with Congress to give the agency more resources. In fact, according to the Alliance for a Stronger FDA, the FDA’s budget is small—$2.04 billion was appropriated for the agency and it collects nearly $600 million in user fees. Eighty-three percent of the FDA’s costs are staff-related. The Alliance, whose membership includes three former Secretaries of Health and Human Services and six former FDA Commissioners, insists that the FDA’s appropriation must increase by about $100 million per year just in order to stay even with increased costs—anything lower will result in decreased staff and programming. In addition, the Alliance believes that the FDA’s base has eroded even while it was given new responsibility and “operates in a world of increased globalization and scientific complexity.” To put it in perspective, the FDA receives less funding than its local school system. Montgomery County, MD, public schools received $2.07 billion in fiscal year 2009; the FDA received $2.04 billion in appropriated funds that same year.

Recently, we heard about peanut products tainted with salmonella. Hundreds of people became sick and nine people lost their lives. In 2008, consumers were sickened by salmonella in peppers and possibly tomatoes. Before that, it was spinach tainted with E. coli that was sold all across the United States.

Overall, the FDA has done good work on food safety, but it also needs more inspectors and more resources to conduct inspections. In fact, on March 14, President Obama stated that about 95 percent of the Nation’s 150,000 food processing plants and warehouses go uninspected each year.

Unfortunately, the FDA struggles with more than just food. On the pharmaceutical side, the FDA has had to deal with safety issues in its own pharmaceuticals. In fact, when the bill was being considered by the Senate HELP Committee, the former FDA commissioner, Dr. Andrew von Eschenbach, expressed serious concerns over this bill. He stated that the bill does not provide enough funding for an expansion of the FDA and does not authorize appropriations for start-up costs. He also expressed concerns that regulating tobacco would jeopardize FDA’s public health mission. Dr. von Eschenbach was right—it makes no sense to expand this agency and divert its attention to tobacco products. I simply cannot understand why Congress is giving this agency any additional duties without OMB to say, in my opinion, about how much money it will cost to carry them out. Although this legislation is funded by tobacco company user fees, how do we know that enough money will be collected? And, while it is my understanding that the substitute big being considered by the Senate will require performance reports on these user fees every 3 years, I feel that these reports should be filed annually. Congress may make necessary adjustments if the program is running out of money.

Another concern I have is the impact that these user fees could have on public health programs. For example, the State Children’s Health Insurance Program—CHIP—which relies on tobacco taxes for its financing. For that reason, I filed an amendment calling for the Comptroller General of the Government Accountability Office to study whether this bill will have an impact on public health programs. It is my hope that this amendment will be accepted by my colleagues.

I would also like to talk in more detail about the mission of the FDA, which is to protect public health. I feel that by requiring the FDA to regulate tobacco, we are putting the agency in direct conflict of this important mission. Here are two undeniable truths about tobacco: (1) tobacco is known to cause serious illnesses and death, and (2) tobacco does not have any health benefits whatsoever. So, I ask you, what sense does it make to have the FDA regulate tobacco, the agency in charge of protecting public health regulate tobacco, a product that is inherently unsafe?

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death and disability, thereby ensuring a long, productive, healthy life for all people. For those reasons, I felt that the CDC’s mission was far more suited to the regulation of tobacco. Unfortunately, that amendment was not approved by HELP Committee members, and, as a result, the Senate is now considering a bill that would designate the FDA as the regulator of tobacco products.

In conclusion, I am probably one of the FDA’s strongest supporters in Congress. Back in the 1990s, I introduced legislation that created the White Oak campus; the unified FDA campus which I envisioned would bring prestige back to the agency. This campus is on track to be completed in 2012. I wanted FDA to be able to attract the brightest minds so we could get the best researchers in the country working together in order to ensure the safety of our drugs, medical devices and food supply. Dr. Margaret Hamburg, the newly confirmed FDA Commissioner, has impressed me with her strong vision for the future of the FDA. It is my hope that by adding the regulation of tobacco to the FDA’s portfolio, that vision does not go off course.

I want to make one thing perfectly clear—I support the intent of this bill which is to stop our young people from picking up that first cigarette and to protect public health by regulating tobacco. That being said, it is my hope that some of the concerns that I have raised will be carefully considered and addressed before this legislation is signed into law.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Delaware.

PRAISE OF DR. DOUGLAS LOWY AND DR. JOHN SCHILLER

Mr. KAUFMAN. Madam President, I would like to continue what I began last month by honoring the contribution of our Federal employees. On May 4, I came to the floor to discuss the importance of recognizing the hard work and dedicated service of our Federal employees. This is especially important because of our recovery efforts during these challenging economic times. The programs we enact, it is easy to say, will be carried out by a Federal workforce that requires people’s confidence. I know from personal experience how industrious and trustworthy civil servants are. The public needs to know that.

As I said then, we also need to encourage more of our graduates to enter careers in public service. America is blessed with so many enthusiastic and entrepreneurial citizens. We need them to lend their talents. We need their ideas, their creative minds. This is why I have made it a priority to honor excellent public servants and call attention to what Federal employees can and do accomplish.

In my previous remarks, I promised to highlight some of our excellent public servants from this desk every so often. In keeping with my promise, I rise to speak about two Federal employees whose achievements are particularly relevant to our work in this session: the current state of our health care system.

As many know, cervical cancer is the second most common cause of cancer deaths in women worldwide. It takes the lives of almost a quarter million women each year. Here in America, nearly 11,000 women are diagnosed annually.

What distinguishes cervical cancer from most other cancers is its cause. While many cancers are linked to a genetic predisposition for abnormal cell growth, nearly all cases of cervical cancer result from viral infections. The majority of these infections come from exposure to the human papillomavirus or HPV. HPV is the most common sexually transmitted disease affecting Americans.

When Dr. Douglas Lowy and Dr. John Schiller began studying HPV, little did they know that their 20-year partnership as researchers would lead to the development of a vaccine.

Working at the National Institutes of Health’s National Cancer Institute Center for Cancer Research, the two discovered that previous attempts at creating a vaccine had failed because a genetic mutation existed in the virus, making it difficult for the body to produce antibodies against it.

Once Drs. Lowy and Schiller made this finding, they worked to create a vaccine that would combat HPV without the mutation. This development is instrumental in the creation a few years ago of a vaccine that will prevent the vast majority of cervical cancer cases from developing.

Because over 80 percent of those who develop cervical cancer cases live in developing nations, Drs. Lowy and Schiller have been working with the World Health Organization to make the HPV vaccine available to women around the world.

In recognition of their achievement, the two men jointly were awarded the 2007 Service to America Federal Employee of the Year Medal.

Today, women and girls age 9 through 26 have the ability to be vaccinated against developing cervical cancer.

Once again, I call on my fellow Senators to join me in honoring Dr. Lowy and Dr. Schiller and all Federal employees who have distinguished themselves in their service of our Nation.

HEALTH CARE REFORM

Mr. KAUFMAN. Madam President, I would like to speak on reforming our health care system. Simply put, health care reform has been delayed for far too long, and it cannot wait any longer. Most Americans are satisfied with the health care they receive today.

I must repeat this. Most Americans are satisfied with the health care they receive today. But if we want to sustain and improve the quality of health care, we need to act now.

What they are concerned about is whether the health care they are going to receive is going to be affordable and, they are also concerned about the cost of health care. We must get health care costs under control while preserving choice.

If we do nothing and allow the status quo to persist, it has been estimated that the share of gross domestic product devoted to health care will rise from 18 percent in 2009 to 28 percent in 2030.

If health care premiums continue to rise at 4 percent per year, which is actually less than the average, then by 2025, premiums for family coverage will reach $25,200 a year—over $2,000 a month. This trajectory is simply unsustainable.

We have attempted to reform our health care system several times in the past to no avail. But this year is different and has to be different. This time the call for reform is coming from people and organizations that previously opposed reform. This time businesses, along with unions that represent their workers, are asking for reform.

Businesses in America have to compete against companies from other countries. Many of them do not pay anything for health care for their workers or retirees. Others pay far less than what many of our larger corporations pay. This puts many of our businesses at a disadvantage in the global marketplace.

In addition, people in my home State of Delaware and Americans across the Nation are struggling to keep up with the crushing and seemingly constant increase in the cost of health care.

Over the last decade, Americans have watched as their health insurance premiums and deductibles have risen at much faster rates than their wages, threatening their financial stability. It also puts them at risk for losing their insurance as employers struggle to provide adequate health care coverage.

Americans rightfully value their relationships with their doctor and the care they receive. We must—and I say must—preserve these relationships. In addition, as costs rise and insurance benefits erode, Americans are also asking to protect what works and fixes what is broken.

Our current health care system—the status quo—is rampant with bureaucracy, inefficiency, and waste. It is time for reform. It is time to reform health care for Americans so everyone has access to quality, affordable care, regardless of preexisting medical conditions. It is time to reform health care so we
place a higher priority on prevention and wellness, saving lives as well as money. It is time to reform health care so all Americans can compare the costs and benefits of different health care policies. It is time to reform health care so Americans have more choices, not less, and can choose their own doctor.

I applaud the members of the Finance Committee and the Health, Education, Labor, and Pensions Committee in the Senate, as well as our counterparts in the House, for their sincere dedication, their thoroughness, and their commitment to crafting legislation that truly will transform the health care system in this country. It is clear this is not an easy task and one that will require true compromise from everyone across the ideological spectrum, but it is a task that must be done. Our country and the health of its citizens, as well as the economy, cannot afford to maintain the status quo.

As the members of these committees gather to discuss and ultimately mark up legislation, I encourage them to include a viable public option in a menu of insurance options from which Americans may choose. It will be—and let me stress this—it would be a purely voluntary option.

If you like your current plan, you keep it. But a public health insurance option is critical to ensure the greatest amount of choice possible for consumers. There are too many Americans who do not have real choices when it comes to health insurance, especially those who live in rural areas.

In addition, many large urban areas are dominated by one or two insurers that serve more than 60 percent of the market. In fact, there are seven States where one insurer has over 75 percent of the market share.

A public option can help Americans expand their menu of insurance providers. A public option could take various forms, and I think the committees are the proper place to determine the appropriate contours of a public option.

I think a good starting point for discussion is the proposal put forward by my colleague from New York, Senator Schumer. It delivers all the benefits of increased competition without relying on unfair, built-in advantages for the federally backed option. This public option would not be subsidized by the government or partnered with Medicare. It would not be supported by tax revenue. It would compete on a level playing field with the private insurance industry. If a level playing field exists, then private insurers will have to compete based on quality of care and pricing, instead of just competing for the healthiest consumers.

This is just one proposal for public option. There are others we can debate as we move forward.

Right now, more than 30 State governments offer their employees a choice between traditional private insurance and a plan that is self-insured by the State. Some of them have had them for more than 15 years.

In these States, the market share of the self-funded plans within the market for employee plans typically ranges from 25 to 40 percent. This shows a healthy competition between the public option and private insurers, not domination by either type of insurer. The States provide these options because they need the competitive offerings they give their workers.

These arrangements do not seem to be a problem or incite ideological concerns at the State level. Why should it be so when discussing health reform on the national level?

A public option can go a long way in introducing quality advancements and innovation that many private insurers do not now have the incentive to implement.

Medicare and the veterans health system have spearheaded important innovations in the past, including payment methods, quality of care initiatives, and information technology advancements.

A new public option could also help lead the way in bringing more innovation to the delivery system and introducing new measures to reduce costs and improve quality.

A public option can serve as a benchmark for all insurers, setting a standard for cost, quality, and access within regional or national marketplaces. It can have low administrative costs and can have a broad choice of providers.

Simply put, Americans should have a choice of a public health insurance option operating alongside private plans.

A public option will give Americans a better range of choices, make the health care market more competitive, and keep insurance companies honest.

The key to all this, however, is that a public option will be just that, as I said—an option.

Some people will choose it; others will not. If you like the insurance plan you have now, keep it. If you are happy with the insurance you get with your employer, or even the individual insurance market, you stay enrolled in that insurance plan. And if you are unsatisfied with the public option, you have the option to switch back to private insurers.

Americans firmly support the ability to choose their own doctor and value their relationships with their providers. So do I.

An overriding goal of health care reform is to increase patients’ access to affordable, quality health care, and offering a public option can help increase Americans’ choices.

I am heartened that I was joined by 26 other Senators several weeks ago in cosponsoring a resolution introduced by Senator Brown calling for the inclusion of a federally backed health insurance option in health care reform.

Senators who have been involved in health care issues for decades—Senators Kennedy, Dodd, Rockefeller, Harkin, Bingaman, and Inouye, just to name a few—have all agreed that a public option should be included.

As I said before, I admire the efforts of my colleagues on the Finance and Health, Education, Labor and Pensions Committees who will be drafting our health reform legislation.

They have an important responsibility, and I recognize that they will be debating many options regarding coverage, financing, regulations, and so on.

I simply encourage them to consider seriously a public option as a choice for Americans in any new health insurance exchange.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

HEALTH CARE REFORM

Mr. Sanders. Mr. President, I think the American people are aware that our country is in the midst of a major health care crisis. That is not a secret to anybody. Forty-six million Americans have no health insurance and, importantly, even more are underinsured, with high deductibles and co-payments. Further, some 60 million Americans, including many with health insurance, do not have access to a medical home of their own. In fact, according to the Institute of Medicine, some 18,000 Americans die each year from preventable diseases because they lack health insurance and do not get to a doctor when they should.

I recall very vividly talking to several physicians in Vermont who told me how people walked into their office, quite sick, and when they asked why they hadn’t come in earlier, they said: Well, we don’t have a lot of money; we didn’t have any health insurance. The result is that those patients died. That happens every single day in this great country.

When we talk about health care, we have to understand that access to dental care is even worse. On top of that, in our Nation, we pay the highest prices in the world for prescription drugs. My State of Vermont borders on Canada, and it is not uncommon for people to go from Vermont to Canada to get the prescription drugs they need at far lower cost than in America.

In the midst of all of this—the 46 million Americans without health insurance, people being underinsured, and people paying outrageously high prices for prescription drugs—at the end of the day, our Nation pays far more for health care per person than any other country on Earth. Far more. It is not even close. Yet despite the enormous...
sum of money we spend, our health care outcomes—what we get for what we spend—lack behind many other countries in terms of life expectancy—how long our people live, in terms of infant mortality, and other health indices. A recent report by the National Center for Health Statistics—this is just one example—the United States ranks 29th in infant mortality in the world—29th in the world. We are tied with Poland and Slovakia for 29th in the world in terms of infant mortality. In all due respect to our friends in Poland and Slovakia, we should be doing a lot better than that because we spend a lot more on health care than they do in Poland and Slovakia.

Further, according to a study published in the London School of Hygiene and Tropical Medicine, the United States has the highest rate of preventable deaths among 19 industrialized nations. Although our rate has declined over the past 5 years, it is doing so at a slower rate than other countries. According to that study, if the rate of preventable deaths in the United States improved to the average of the top three countries, which are France, Japan, and Australia, approximately 100,000 fewer residents of the United States would die annually.

When we talk about health care, we are not just talking about individuals who suffer and die because they do not have health care. What we are talking about is the cost of health care—as President Obama makes clear all of the time—is a major economic issue as well. In our country today, we are now spending about 16 percent of our GDP on health care, and the cost of health care is continuing to rise at a very high rate, which becomes economically unsustainable. The fact is, General Motors, which recently declared bankruptcy, spends more money on health care per automobile than they spend on gas, and that is an economic climate in which America—our companies—becomes non-competitive with other countries around the world. But it is not just large corporations such as GM. Small business owners in Vermont and throughout this country are finding it harder and harder not only to provide health care for their workers but even for themselves.

In addition, a recent study found that medical problems contributed to 62 percent of bankruptcies in 2003 and that between 2001 and 2007, the proportion of all bankruptcies attributable to medical problems rose by nearly 50 percent. Interestingly, 78 percent of those who experienced bankruptcy as a result of illness were insured. These are not people who did not have any health insurance. But it speaks to the inadequacy and the lack of coverage, comprehensive coverage, in many health insurance programs.

We as a Congress, for whatever reason—and I will suggest the reason in a moment—do not really spend a lot of time discussing why the American health care system is so expensive, why it is so inefficient, why it is so complicated. We do not talk about that very much. I fear that has a lot to do with the role private health insurance plays over the political process in this country. I will come back to this point. In my view, the evidence is overwhelming that the function of a private health insurance company is not to provide health care. The function of a private health insurance company is to make as much money as it possibly can. The truth is, the more health care a private health insurance company denies people, the more money it makes. If you submit a claim for coverage and they deny it, from their perspective, that is a very good thing because they make more money.

Further, in pursuit of making as much money as they can, private health insurance companies have created a patchwork system which is the most complicated, the most bureaucratic, and the most wasteful in the world. According to a number of studies, we are wasting about $400 billion a year in administrative costs, in profit-seeking, and fraudulent billing practices. That is enough money to provide health care to all of the uninsured.

I know there is not an issue we are supposed to be talking about here on the floor of the Senate because we are not supposed to take on the insurance companies or the drug companies because of all of their power. But I believe, if we are serious about moving toward a comprehensive, cost-effective health care system in this country, we have to talk about the very negative role private health insurance companies are playing in that process.

Administrative costs for insurers, employers, and the providers of health care in the United States are about one out of every four health care dollars we spend. In other words, for every $1 we spend, one quarter of that dollar does not go to wages, does not go to nurses, does not go to therapists; it goes to administration. That is at the root of the problem we have in terms of health care costs in America. In California—one example—only 66 percent of total insurance premiums are used to cover hospital and physician services. One-third, $1 out of every $3, is spent on administration, billing, claims processing, sales, and marketing, finance and underwriting.

The American people want their health care dollars spent on health care. I know that is a radical idea, but when people spend money on health care, they want that money toward the provision of health care, not profit-seeking, not administration, not hiring more bureaucrats to tell us we are not covered when we thought we were covered. What the American people want is closer to 100 percent of that dollar go to health care and not bureaucracy.

While health care costs in America have soared, as everybody knows, from 2003 to 2007 the combined profits of the Nation’s major health insurance companies increased by 170 percent. Health care costs are soaring, profits of the major health insurance companies have gone up by 170 percent from 2003 to 2007, and CEO compensation for the top four health insurance companies averaged over $14 million per CEO. To add insult to injury, some of these health care profits are going directly into campaign contributions and into lobbying to make sure, in fact, the Congress does not move toward real health care reform, which, in my view, means a single-payer health care system.

That is where we are right now. We have the most inefficient, wasteful, bureaucratic system of any major country on Earth. Our health care outcomes, despite all the money we spend, are way below many other countries in the world. And we are not discussing the most important issue with regard to health care spending: that is, the role private health insurance companies are playing.

We are now in the beginning of the debate on health care. I am going to do my best to make sure that issue of the role private health insurance companies are playing in this country, the very negative role they are playing, is something that, in fact, we talk about.

With that, I yield the floor.
Her son was advocating for her, of course, too. But she went through the trauma and pain of cancer and the trauma and pain of dealing with insurance companies. We know that. Yet some in this body want to increase the role of private insurance and allow them to continue to game the system.

We also know that private insurance companies in many ways are simply a step ahead of the sherrif. They do not mind insuring someone who is 60 and healthy, but they would rather not insure someone who is 63 and unhealthy because they can make more money on someone who is healthy, but in someone who has a preexisting condition, they will find a way not to insure them or not to pay off to them when they get sick. We know about the inefficiencies in the health care system, in private insurance. We know the difficulties with private insurance, the bureaucracy, and we know about the administrative costs of private insurance.

Private insurance administrative costs run anywhere from 15 percent to 30 percent, depending on whether you are in a big group plan, a smaller group plan, or an individual plan. We also know Medicare, which has delivered for 44 years—it was signed by President Johnson in July of 1965—we know Medicare has delivered very well in the great majority of cases for the American people, for the elderly, but we also know Medicare has about a 2-percent or 3-percent administrative cost—again, contrasted with 15 to 30 percent with private insurance companies.

We also know, interestingly, there is a statistic—there was a study several years ago of the richest industrial democracies—France, Germany, Japan, Israel, England, Spain, Italy, Canada, and the United States—and they rated all these countries according to several health care indices: life expectancy, infant mortality, maternal mortality, incidence of children, all these kinds of things. Of the 13 countries they looked at, the United States ranked 12th. Even though we spent twice as much as any other country on Earth per capita, our outcomes were not as good. We were 12th in the category. France, Germany ranked near the top, and that is life expectancy at 65.

If you get to be 65 in this country, the chances are you are going to live a longer life than almost any other country in the world. Why? Because we have a health care system, Medicare, that provides health insurance for everybody over 65. There are holes and gaps in coverage in Medicare; the premium can be pretty hard for some to reach; the copay and deductibles can be a problem.

Overall people know when they have Medicare they are pretty darned well taken care of. That is not the case for people under 65. I came to the floor tonight for a few more moments, as I was listening to Senator Sanders talk so eloquently, to share a couple stories.

Sherry, in Albany, OH, is not Medicare eligible. She is forced to consider borrowing from the equity in her home to pay her $1,070 premium through COBRA. She had a job. She lost her job. She has to pay the employer and employee side to pay for her health insurance. That is the way COBRA works. It is a good program but a bit of a cruel hoax. If you lose your job, it is pretty hard to pay your premium and your employer's premium at the same time.

She is considering borrowing against her house to pay for her health insurance for COBRA for 18 months. She will get a little bit of help now, because in the stimulus package, we took care of some of that. She has to find a way until she is 65 to cobble together insurance.

Terry, a small business owner nearby in Columbus, expects to pay 35 percent more this year to cover his employees. He wants to cover his employees, but he has a 30-percent increase. What is he supposed to do, especially when his business—I don't know a lot about his business, but so many small businesses are squeezed more and more because of the economy. So we know these stories, and that is why it is so important that we address health care reform this year.

We want to do several things. First of all, anybody who is in a health care plan they are happy with, they are satisfied with now, they can stay in that plan. If they want to make that choice, they stay in the plan. Second, we need to do something on costs, to stop the huge increase in premiums, copays, deductibles. We have to do a better job to contain the costs in the health care plan than this government or the private sector has been able to do for decades.

Third, we need to give people full choice. That means they can stay in their plan, as I mentioned earlier, No. 1, but they also will have a choice of private insurance plans and a public plan, a public option. So they can choose, or a child may choose, or a private plan with United Health or a private plan with BlueCross BlueShield or they can decide to join a public plan, a public plan that might look similar to Medicare, which they can decide, perhaps they may have to pay a little more or have better preventive care or a plan with lower copays or deductibles.

They can make the choice. A great majority of the Democratic caucus, and I think the overwhelming sector wants that option, a public plan and a private plan they can choose, that might be similar to Medicare.

Anything we tried in health care, every time that health care reform was introduced, the cries of "government takeover" and "socialized medicine" were heard from by conservatives who do not think government should have a role in taking care of people.

We are the only country in the world that thinks that, it seems like, because every other country has a major part of their health care plan, a major part of health care is involved with the government, if not the whole plan.

We are not asking for a government takeover, we are not doing socialized medicine. That is what they always say. We heard it in 1948, when Harry Truman tried to push through Medicare. We heard it in 1965, when Lyndon Johnson and the overwhelmingly Democratic House and Senate passed the Medicare law. We heard it in 1993, my first term in the House, Senator Sanders' second term in the House. And that is what insurers are claiming today. They are saying: Government takeover of medicine. That is not true. We want a government option. We want the government to provide a Medicare plan that people can choose from. You can choose a private plan or a public plan.

Americans deserve no less. Our country can afford no less. The President asked us to move on this as quickly as we can and to do it right. This is our chance, and I think we are going to do it.

Mr. Sanders. Would the Senator from Ohio yield?

Mr. Brown. Yes.

Mr. Sanders. I wish to thank him for his cogent remarks, talking about one of the most basic issues facing this country and that is health care. We are on the Veterans' Committee as well, and I know you spent some time talking to veterans in Ohio. Has the Senator heard a veteran in Ohio tell you they want to privatize the VA?

Mr. Brown. I have heard mostly conservative Republicans say they want to privatize the VA.

Mr. Sanders. Every time that issue is raised, the veterans say no.

Mr. Brown. One of the things we noticed about the Veterans Administration is that the VA has found a way to buy, at the lowest cost possible, some of the least-expensive but good-quality prescription drugs. Because what the VA does—there are millions of veterans—they negotiate on behalf of veterans with individual drug companies for individual prescription drugs, individual pharmaceuticals, and they get a rate at about one-half of what you would pay if you went to Drug Mart or Rite Aid or any of the other stores.

The Medicare bill, when it came through the House and Senate—President Bush pushed that bill—they did not allow us to negotiate drug prices. We know what this is about. We know if we follow the lead of the drug industry and the insurance industry, which this Congress did through most of the first part of this decade with President Bush, we end up with special interest laws that protect the drug companies or insurance companies.

Or we can now pass health care with a public option plan, give the public the option of going to a Medicare-like plan instead of a private insurance company plan, if they want to, or stay in the plan they are in and then they decide on what kind of care they would like.

Mr. Sanders. My friend from Ohio is exactly right. If you talk to the people of this country, if you talk to the veterans and say: Do you want VA
health care to be privatized? Overwhelmingly, no.

In recent years, the Senator from Ohio, I, and others, have worked to substantially increase funding for federally qualified community health centers all over this country. These are the most cost-effective ways of providing quality health care, dental care, low-cost prescription drugs, mental health counseling.

The people of this country want those in Washington to have success in expanding that program. But I get a little bit tired of hearing from some of our friends on the other side who tell us: Oh, people do not want government involved in health care. Well, you tell that to seniors. Tell them you want to privatize Medicare. Tell that to the veterans, that you want to privatize the VA.

The fact is, as the Senator from Ohio indicated, we are wasting tens and tens of billions of dollars every year in bureaucracy, in billing. In excessive CEO salaries through private health insurance companies. At the very least, the people of this country are demanding, and we must bring forth, a strong—underline ‘strong’—public option within any health care reform program we develop.

Mr. BROWN. I thank the Senator from Vermont. It is pretty clear, and I think this Congress is going to do the right thing. The President, when he met with the Congress, as he did in the campaign, was strongly in favor of purchasing insurance from the Medicare look-alike plan or private plans or either one or keeping what they already have.

The President has spoken strongly on it for months. The majority of this Congress wants to do the same. I am hopeful that is what we will do in the months ahead.

HONORING OUR ARMED FORCES

SERGEANT JUSTIN DUFFY

Mr. NELSON of Nebraska. Mr. President, I rise today to honor Army SGT Justin J. Duffy, age 31, who was killed in Iraq on June 2, 2009.

Sergeant Duffy was born in Moline, IL. As a child, his family moved to Cozad, NE, where he graduated from high school in 1995. He earned a degree in criminal justice from the University of Nebraska at Lincoln. Duffy worked at Eaton Corporation for 5 years, where he was recognized for his work ethic and leadership ability and promoted to a supervisor position. His colleagues and friends said Duffy was the kind of person who never missed a day on the job and was always on time and ready to work. This young man stood out among his peers and always sought a challenge, so it came as no surprise to his friends and family when he decided to join the Army, enlisting in May 2008.

Sergeant Duffy’s father Joe said the U.S. Army had attracted his son because he wanted adventure and needed more of a challenge and he believed that desire would be fulfilled by serving in the military. His time with the U.S. Army was marked by success; one of his proudest accomplishments was his quick rise to Sergeant, beating the standard time it normally takes to achieve that rank. Sergeant Duffy was assigned to the 3rd Brigade Combat Team, 82nd Airborne Division. While in Iraq, Sergeant Duffy’s team was responsible for escort security for high-ranking military leadership. Sergeant Duffy was killed in eastern Baghdad after an improvised explosive device detonated near the humvee he was driving; three of his fellow soldiers were also wounded in the blast. Sergeant Duffy served his country honorably and made the ultimate sacrifice for his fellow Americans. His life and service represents an example we should all strive to emulate.

SOT Justin Duffy leaves behind his parents Joe and Janet Duffy of Cozad, NE; his grandfather LeRoy Hood of Missouri Valley, IA; two sisters Jenny of Grand Island, NE, and Jackie of Yuma, AZ. He will forever be remembered by his family and friends as the kind of person who was quick to jump in wherever he was needed; some even labeled him a ‘shepherd’, and he always looked out for family, friends, and even strangers. I join all Nebraskans today in mourning the loss of Sergeant Duffy and offering our deepest condolences to his family.

SPECIALIST JEREMY R. GULLETT

Mr. BUNNING of Kentucky. I would like to invite my colleagues to join me in recognizing Greenup County, KY, for paying tribute to Army SPC Jeremy R. Gulllett.

SPC Jeremy R. Gulllett served in the 4th Battalion, 320th Field Artillery Regiment of the 101st Airborne Division based out of Fort Campbell. He lost his life in the line of duty on May 7, 2008, in the Sabari District of Afghanistan.

This evening Greenup County will have a dedication ceremony to name a local bridge after Specialist Gulllett, honoring his life and service to our Nation. The bridge will serve as a reminder to all of those who live or travel through Greenup County of the sacrifice Specialist Gulllett made for our freedom.

A member of the Greenup County High School Class of 2003, Specialist Gulllett participated in his high school Junior ROTC program and joined our Nation’s Armed Forces soon after earning his diploma. In addition to serving under our Nation’s armed services, Specialist Gulllett was a member of Little Sandy Volunteer Fire Department and Veterans of Foreign Wars, dedicating his life to service domestically and internationally.

Specialist Gulllett’s sacrifice for our Nation will forever be a reminder that freedom comes at a high cost. We should never take for granted the sacrifices of our service members and women who make daily sacrifices in all branches of the Armed Forces.

As we commemorate the life and service of SPC Jeremy Gulllett, my thoughts and prayers are with his friends and family. All Kentuckians and Americans are deeply indebted to Specialist Gulllett.

DECEPTIVE MARKETING

Mr. LEVIN. Mr. President, last month the Senate passed and the President signed H. R. 627, the Credit CARD Act of 2009. Thanks to the hard work of Senator DODD, Senator SHELBY, Representatives MALONEY, many other Members of Congress, and the multitude of fed-up citizens who protested unfair treatment by credit card companies, this landmark bill to protect consumers from abusive credit card practices was passed over the objections of powerful lobbies. Millions of Americans will benefit now that some balance of power is being restored between card holders and card issuers.

Today, I want to thank Senator DODD and Senator SHELBY for including in the Credit CARD Act a provision that I authored and that was cosponsored by Senator COLLINS and Senator MENENDEZ, to stop the deceptive marketing of free credit reports. I would also like to thank Senator PRYOR for working with me to address his concerns about the provision.

Credit reports are a record of an individual’s history of receiving and repaying loans, and they frequently contain errors. At the same time, the credit reporting companies use these credit reports to calculate the credit scores that have become so central to evaluating a person’s creditworthiness. Credit scores are used to determine whether someone will qualify for a credit card, what interest rate they will get, and whether and when that rate will increase. Credit scores perform a similar function for home mortgages, car loans, and consumer lines of credit. Some companies use these scores to screen applicants for apartments, insurance, security clearances, and even jobs. The important role a credit score plays in our everyday lives makes it all the more critical that the reports used to calculate these scores are accurate and accessible to consumers.

In the United States, three large nationwide credit reporting companies, often called “credit bureaus,” compile and maintain credit reports for the vast majority of consumers. Until Congress passed the Fair and Accurate Credit Transactions, FACT, Act of 2003, consumers had to pay a fee in order to access or attempt to correct the information in their credit reports.

The FACT Act gave consumers the right to a free annual report from each of the nationwide consumer reporting companies. The FTC mandated the establishment of a website, AnnualCreditReport.com, to provide consumers access to their federally mandated free credit reports. In these difficult economic times, it is critical that consumers have a clear understanding of their right to get a free annual report, an easy way to obtain
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those reports, and the ability to correct any mistakes since mistakes in a credit report could cost someone a loan or a job.

Today, however, television, radio, and the internet are awash in misleading denizens for free credit reports. A cottage industry has sprung up of unscrupulous marketers who confuse or deceive consumers into buying products or services they may not need or want by tying the purchases to the offer of a so-called ‘‘free credit report.’’ Many of these marketers deliberately obscure the difference between the free reports to which consumers have a right under Federal law—which come with no strings attached—and the ‘‘free reports’’ that marketers condition on purchases of credit monitoring, credit scores, or other products.

Deceptive advertisements direct consumers to contact commercial sources unaffiliated with the government-affiliated websites authorized to provide a free credit report. A 2007 study by Robert Mayer and Tyler Barrick of the University of Utah in a free credit report must also opt in to receive a credit report. It is revealed that customers that request a free credit report provided by law. The Better Business Bureau TransUnion, and eight were owned by or closely connected to the nationwide credit bureau Experian.

The Federal Trade Commission has sued companies engaged in such misleading practices, but the deceptive advertisements have not stopped. Since 2005, for example, Experian has paid the government more than $1.2 million in settlements over deceptive marketing of ostensibly free credit reports through the website FreeCreditReport.com. And yet FreeCreditReport.com, through its seemingly ubiquitous advertisements, still continues to deceptively peddle its product. At this very moment the Florida Attorney General’s office has an active investigation into FreeCreditReport.com for “failure to adequately disclose negative option enrollment in credit monitoring with ‘Free’ credit report, deceptive advertising, misleading domain name, and failure to honor cancellations.”

Section 205 of the Credit Card Act, which contains the Levin-Collins-Menendez provision, will shore up the nation’s consumer protection in the FACT Act by requiring simple, honest disclosure in advertisements for ‘‘free’’ credit reports. Mandatory disclosures will help ensure that consumers are given accurate information about how to obtain a free credit report with no strings attached. It is an effort to end the deceptive activities of companies that attempt to trick people into buying something that they are entitled by Federal law to have for free.

Section 205 directs the Federal Trade Commission to issue a rule by February 2010, to require companies advertising free credit reports to disclose the availability of the government-mandated free credit report in all mediums—internet, television, radio and print. Under the statute, the rulemaking must require that all television and radio ads for free credit reports include the disclaimer that “This is not the free credit report provided by law.” The rulemaking will also require that all internet advertisers of free credit reports prominently display on the advertiser’s homepage and possibly the advertisement itself that consumers can order the free credit reports provided for by federal law from www.AnnualCreditReport.com.

Section 205 provides for FTC rulemaking to flesh out the disclosure requirements, such as what information should be provided, how it should be formatted, and where it should be displayed. This section will not achieve its purpose unless the mandated disclosure is made in a clear, prominent and effective manner, a standard that disclosures in many current promotions do not achieve. The cleverly demphasized disclosure currently on FreeCreditReport.com, for example, would not be sufficient.

The success of a disclosure in alleviating confusion and deception depends critically on the manner in which it is presented. Even seemingly minor differences in language or presentation can make the difference between effective and ineffective disclosures. Section 205 recognizes these challenges and the FTC’s unique ability to meet them by giving the agency the authority to implement this new disclosure requirement by rule. I encourage the FTC to study leading practices and use that information to make rules to determine the most effective disclosures and to design separate disclosure requirements for each type of medium: television, radio, internet, and print.

Section 205 (b)(2)(B) states that, “for advertisements on the Internet,” the FTC rulemaking shall determine “whether the disclosure required under section 612(g)(1) of the Fair Credit Reporting Act (as added by this section) shall appear on the advertisement or the website on which the free credit report is made available.” I want to be perfectly clear, as the Senator who authored this provision and ensured its inclusion in the final bill, that this section is intended to allow the FTC to require disclosure on an internet ad, on the website to which the ad is linked, on the “home” website of the company advertising “free” credit reports, or on any combination of the three. In my view, most forms of internet advertising, such as banner ads and paid search engine links promising free credit reports, should include disclosures. It will be up to the FTC to determine the nature and extent of the disclosures on each form of internet advertising.

The goal of section 205 is to eliminate consumer confusion and deception by preventing commercial promotions from posing as the Federal free annual report program, and by ensuring that consumers know how to get their truly free annual reports. Although this provision does not prohibit the marketing of “free credit reports” per se, nothing in this section is intended to limit the FTC’s authority under Section 5 of the FTC Act to prohibit deceptive practices in or affecting commerce, or its authority under the FACT Act to promulgate regulations regarding the
centralized source for free credit reports. In fact, I hope the FTC utilizes all of its authority to end the deceptive marketing of free credit reports.

Today, deceptive marketing of “free” credit reports is big business. Ads appear on television, the internet, and other media. One of the leading advertisers of ostensibly free credit reports that are, in fact, linked to paid services is Experian, which vigorously opposed the disclosure requirements in Section 205. Despite its best efforts to sugarcoat its marketing practices, Experian acknowledged that if it were required in its advertising to inform potential customers of their legal right to get a no-strings-attached free credit report, it would have a harder time selling a “free” credit report that also requires consumers to sign up for credit monitoring at $15 per month.

Experian spends tens of millions of dollars advertising FreeCreditReport.com, dwarfing government efforts to publicize the availability of free credit reports at AnnualCreditReport.com and effectively undermining the intent of the free credit report provision of the FACT Act. So it is no surprise that Experian defends its marketing practices, even in instances where it gamed customers with aggressive lobbying.

I am confident that the FTC will stand up to that kind of pressure and issue strong pro-consumer regulations by the February 2010 deadline in the law.

If, however, the FTC has not issued final rules by the statutory deadline, Section 205 requires an interim disclosure. “Free credit reports are available under Federal law at: AnnualCreditReport.com, to be included in any advertisement for free credit reports in any medium. That interim disclosure is intended to be required in all ads from February 2010, until the FTC rulemaking is finalized.

As chairman of the Permanent Subcommittee on Investigations, I have spent the last 4 years working to expose industry-wide credit card abuses. In 2007, my subcommittee held hearings which brought before the Senate not only consumers victimized by unfa ir practices, but also the credit card CEOs who approved those practices. In many cases, the card issuers that engaged in these practices relied upon in forming a credit report.

Section 205 of the Credit CARD Act will help prevent the subversion of a key consumer protection. I thank my colleagues for enacting Section 205 into law.

REMEMBERING TIANANMEN SQUARE

Mr. GRAHAM. Mr. President, today marks a somber anniversary. Twenty years ago today, months of peaceful protests throughout China culminated with the violent deaths of hundreds, if not thousands, of Chinese citizens advocating for democratic reforms. It is with sadness that we mark this occasion, but it is also an opportunity to renew our call for political reform in the People’s Republic of China.

One of the first things you see when you walk into my office is a large poster depicting the iconic image of a lone man staring down a line of Chinese soldiers. This image symbolizes the worldwide struggle for democracy, the rule of law, and the promotion of basic human rights. Unfortunately, a generation of students in China can’t identify the image or tell you about the events leading up to June 3 and 4, 1989. This is because China has failed to acknowledge or account for the actions that led up to this event.

While the intervening years since the tragedy have seen China grow into a rapidly developing country, economically intertwined with the rest of the world, China’s failure to deal with the Tiananmen events prevents the nation from making the political reforms necessary to truly become a respected member of the international community.

In the years following Tiananmen, leaders of the Communist Party of China including Jiang Zemin, declared, “If we had not taken absolute measures, this terrorist event might have undermined the stability we enjoy today. A bad thing has turned out to be good.” General Chi Haotian, the General in charge of the People’s Liberation Army’s response to the protest later stated that, “I can tell you in a responsible and serious manner that at that time not a single person lost his life in Tiananmen Square.” Leaders of the military crackdown such as Deng Xiaoping and Li Peng, have never been held accountable for the actions of the People’s Liberation Army and there has never been an official acknowledgement of the number of protesters killed or put in prison. Some accounts have claimed that more than 20,000 people were arbitrarily arrested and held without trial. A number of these people remain in prison today.

Today would have been a landmark occasion for the Chinese government to announce that they were starting an independent and open investigation related to the events of June 4, 1989. However, other than checkpoints set up in Tiananmen Square and efforts by the Chinese government to prevent international media outlets from filming in the square, there are no signs that today is anything other than an ordinary day in China.

While the events of 20 years ago by the Chinese government launched a coordinated effort to prevent further unrest, it also helped crystallize a movement that continues today. Democracy advocates in China have built upon the legacy of Tiananmen and have led various efforts to force accountability and political reforms. All who watch China applaud the tireless work of Ding Zilin, the leader of Tiananmen Mothers, Liu Guozhong, Nanfang, Yang Xuebo and the rest of Charter 08, as well as countless others such as Jiang Qisheng who continue to face intimidation and imprisonment, yet persist with their cause.

They can rest assured that ultimately their efforts will be successful. Today’s world is increasingly interconnected. Communication and travel have gotten easier, and with the development of the internet, despite censorship efforts, information is becoming more readily available to the Chinese people. Every day it becomes more difficult for the Chinese government to keep its people in the dark. They will find out about how the outside world operates, they will find out about how the outside world operates, they will demand changes at home.

SRI LANKA

Mr. LEAHY. Mr. President, the recent defeat of Sri Lanka’s Tamil Tigers, otherwise known as the Liberation Tigers of Tamil Eelam, or LTTE, is welcome news led by a reclusive, cult-like figure who apparently saw no evil in forcibly recruiting and brainwashing young children to become suicide bombers, the LTTE long ago forfeited any legitimate claim to representing the interests of the Tamil population. This resounding victory offers the possibility—after 30 long years of conflict, including ruthless acts of terrorism by the LTTE and other atrocities against civilians by both sides—of lasting peace for all inhabitants of that small island nation.

I first became interested in Sri Lanka when a good friend, James Spain, was the U.S. Ambassador there. He often told me of the beauty of the country and its people, and it has been painful to observe the suffering that has befallen them. That suffering was further exacerbated by the tsunami which crashed ashore in December 2004, causing immense destruction and loss of life.

A member of my staff was in Sri Lanka at that time, but far enough inland to escape harm. I have strongly supported humanitarian aid for Sri Lanka, and 2 years ago, as chairman of the State and Foreign Operations Subcommittee, I included additional funding for economic development in the north eastern region of the island after the LTTE were forced to retreat from that area. I look forward to being able to support additional reconstruction aid, so the northern communities that have been trapped in poverty and devastated by the conflict can recover. But for that to occur, several things need to happen.

The war claimed the lives of tens of thousands of Sri Lankan soldiers, LTTE combatants, and civilians. The tremendous loss and grief suffered by the families of both sides needs to be acknowledged in order for reconciliation to occur.

The government should immediately account for all persons detained in the conflict. It should provide access by international humanitarian organizations and the media to affected areas.
and to populations of internally displaced persons who remain confined in camps, which should be administered by civilian authorities. These people should be allowed to leave the camps as soon as possible so they can start to rebuild their lives.

As soon as possible, the government needs to begin implementing policies for the devolution of power to provincial councils in the north and east as provided for in Sri Lanka’s Constitution. This and other steps are needed to demonstrate that all Sri Lankans can live without fear and participate freely in the political process. It must address the longstanding, legitimate grievances of the Tamil population so they can finally enjoy the equal rights and opportunities to which they, like other Sri Lankan citizens, are entitled.

There is also the issue of accountability for violations of the laws of war. The LTTE had a long history of flagrant violations of human rights, including kidnappings, extrajudicial killings, disappearances, and deliberately targeting civilians. The Sri Lankan military engaged in similar crimes. Although the Sri Lankan Government prevented access for journalists to the war zone in order to avoid scrutiny of the military’s conduct, video footage was smuggled out. And as the smoke has lifted from the battlefields, there are reports that thousands of Tamil civilians who were trapped in the so-called safe zone perished in the last months of the war. There is abundant evidence that they were deliberately targeted with relentless shelling and aerial bombardments, despite repeated appeals by the international community that they be spared. There are also growing fears of retaliatory attacks against those who criticized such tactics.

The recent decision of the United Nations Human Rights Council rejecting calls by Navi Pillay, the United Nations High Commissioner for Human Rights, for an international investigation of these violations is unfortunate but not surprising. Several of the Council’s members routinely arbitrarily imprison and torture political opponents in their own countries. The Sri Lankan Government, which seeks international aid to rebuild, insists that what occurred there is an “internal” matter and that for outsiders to call for accountability is a violation of sovereignty. To the contrary, the denial of basic rights and freedoms is a legitimate concern of all Sri Lankans irrespective of religious affiliation or ethnicity, and that those responsible for crimes against humanity or other violations of human rights are held accountable.

Thankfully, a long, bloody chapter of Sri Lanka’s history has ended. But it is the next chapter that will determine whether justice and lasting peace can be achieved. If the Sri Lankan Government seizes this opportunity to unite the Sri Lankan people in support of an inclusive effort to address the causes of the conflict, the United States will be a strong partner in that effort.

HONORING AMERICA’S WORLD WAR II VETERANS

Mr. MARTINEZ. Mr. President, this week, we pay tribute to those who fought for freedom’s cause during World War II. Two monumental efforts occurred that resulted in turning the war efforts in favor of the Allied Forces and the Battle of Midway. Each was a demonstration of our nation’s commitment to freedom, a blow against tyranny, and the tremendous sacrifice everyday Americans are willing to make for peace and security.

This year marks the 65th anniversary of D-day, the day the tide began to turn against totalitarianism in World War II. On that day, Allied troops stormed a Normandy beachhead to claim a foothold on the edge of Nazi-occupied Europe. More than 1,000 Americans sacrificed their lives during the invasion, including 130 Floridians.

As the largest land, air, and sea invasions in history, D-day brought together Allied forces and unprecedented military resources, including more than 150,000 servicemen, 13,000 aircraft, and 5,000 ships. By the day’s end, more than 9,000 Allied warriors had sacrificed life and limb so that others could begin the perilous journey into Europe to defeat the forces commanded by Adolf Hitler. D-day tested the courage and character of every American involved in the invasion. Like those who came before them, the soldiers who fought that day fought courageously for a freedom the men and women of our military still fight to defend.

Coinciding with the anniversary of D-day is the 67th anniversary of the Battle of Midway, another turning point in the war. The battle claimed the lives of 305 Americans and helped to slow Japan’s advance across the Pacific. America’s forces executed the mission with tremendous skill and helped deliver one of the war’s most decisive and crucial victories.

On these anniversaries, let us remember and recognize the courage of those who sacrificed their lives to restore hope through the liberation of those in occupied territories. Let us honor and thank those veterans that continue to share their unique stories from these extremely important events that have blessed the men and women of the U.S. military, and continue to bless our great Nation.

COMMENDING MEHARRY MEDICAL COLLEGE

Mr. ALEXANDER. Mr. President, being a native of Tennessee, I wish to commend Meharry Medical College. It is the largest medical school in the nation for training physicians who are Black and who are from minority backgrounds. It is a school that has produced over 20 percent of the nation’s African-American physicians and has been an inclusive effort to address the causes of the conflict. I am pleased to report that Meharry Medical College in Nashville is poised to receive the single largest endowment gift in the college’s 130-year history.

The Robert Wood Johnson Foundation, the largest philanthropic organization in America devoted exclusively to health care, has selected Meharry to receive a multimillion-dollar endowment and other funding to establish the Robert Wood Johnson Center for Health Policy at Meharry Medical College to produce our country’s next generation of health care policy experts. Meharry will be partnering with Vanderbilt University College of Arts and Science on this project.

This gift is especially timely as the Nation grapples with economic challenges and millions of uninsured citizens amid growing bipartisan support for reforming the U.S. health care system. The new center aims to serve as a think tank for the pressing health care issues of the day: to increase the diversity of health policy scholars with doctors who are formally trained in sociology and economics; and to provide students and faculty with new curricula, research and academic offerings in health policy. The center seeks to reshape the future of America’s health policies by creating a more inclusive pool of experts trained in health policy and allied disciplines.

Meharry Medical College is the Nation’s largest private, independent, historically Black academic health center. It produces over 20 percent of the Nation’s African-American physicians and 33 percent of the Nation’s African-American dentists. These health professionals take care of those most in need: the underserved in our rural and urban communities across the country.

I know Meharry is pleased to be selected to receive this gift and produce scholars who will make a real impact on our health policy at this critical time. Though their graduates may serve the country, we Tennesseans are especially proud of Meharry and its many contributions to our State and the Nation.

COMMENDING KATHLEEN L. "KATIE" WOLF

Mr. BAYH. Mr. President, today I wish to commend the colleagues of Hoosier Kathleen L. "Katie" Wolf as her work recognizes the many accomplishments of Katie, a distinguished public servant and a model citizen who over the years...
has contributed much to her community in Monticello and to the Hoosier State.

A native of Princeton Township, IN, Katie Wolf has long been a pillar of her community. In 1967, she served as the secretary-treasurer representing the White County United Fund, now known as the United Way of White County.

In 1968, Katie ran and was elected to the position of clerk of the White County Circuit Court, a role she filled for over a decade before being nominated to the Judiciary Committee for the Democratic National Committee. In 1984, Katie became the first woman to run for and win a position in her district in the Indiana House of Representatives, and during her first term she was elected Outstanding Freshman Legislator. In 1986, Katie was appointed senator for District Seven in the Indiana State Senate.

Throughout her career, Katie has been the recipient of numerous awards and designations, a testament to her stature as a model Hoosier and as a leader in public life in Indiana. She has received the Director’s Award from the National Federation of Independent Businesses, the Director’s Award from the Purdue University Cooperative Extension, and Legislator of the Year from the Indiana Trial Lawyers Association. Former Indiana Governor Frank O’Bannon presented Katie with the Sagamore of the Wabash Award, which is the highest honor that the Governor of Indiana can bestow. It is an award reserved for those who have made outstanding contributions to the Hoosier State. Last month, she received an honorary doctor of laws from Saint Joseph’s College in Rensselaer.

Next week, Katie will receive an award from the local chapter of Women Giving Together, an organization committed to strengthening the communities of White County. I am proud to have had the opportunity to recognize her for the remarkable service she has rendered on behalf of the people of Indiana and congratulate her on receiving another well-deserved distinction.

125TH ANNIVERSARY OF THE FOUNDING OF STOCKHOLM, SOUTH DAKOTA

Mr. JOHNSON. Mr. President, today I wish to pay tribute to the 125th anniversary of the founding of Stockholm, SD. This rural community is the seat of Campbell County in northeast South Dakota. The town was built on hard work and a spirit of community 125 years ago, and those same values sustain it today.

Edward C. and his father E.H. McIntosh were the first settlers, arriving in the area on June 10, 1884. They called the town Mound City because of the small hills to the north. Soon after, an elegant hotel and post office were constructed. The first newspaper, the Mound City Journal, was started in 1893. Mound City also had a flour mill. The town rallied and raised enough money to again build the mill.

This perseverance and dedication illustrates what has gotten Mound City to this monumental anniversary, and I am proud to recognize them on their achievements. The citizens of this town are dedicated and hard working, demonstrating what a great State South Dakota is.

125TH ANNIVERSARY OF THE FOUNDING OF MOUND CITY, SOUTH DAKOTA

Mr. JOHNSON. Mr. President, today I wish to pay tribute to the 125th anniversary of the founding of Mound City, SD. This rural community is the seat of Campbell County in south South Dakota. This town was built on hard work and a spirit of community 125 years ago, and those same values sustain it today.

Edward C. and his father E.H. McIntosh were the first settlers, arriving in the area on June 10, 1884. They called the town Mound City because of the small hills to the north. Soon after, an elegant hotel and post office were constructed. The first newspaper, the Mound City Journal, was started in 1893. Mound City also had a flour mill. The town rallied and raised enough money to again build the mill.

This perseverance and dedication illustrates what has gotten Mound City to this monumental anniversary, and I am proud to recognize them on their achievements. The citizens of this town are dedicated and hard working, demonstrating what a great State South Dakota is.

COMMENDING ELMET TECHNOLOGIES

Ms. SNOWE. Mr. President, as we are all aware, the lengthy process of globalization has made it necessary for many American businesses to promote their goods in international markets. And despite the present economic recession, Maine businesses exported a record $3 billion in goods last year. I wish to highlight Elmet Technologies, a shining company that has been a part of that historic figure and has excelled in growing its customer base by marketing to overseas firms.

Elmet Technologies was founded in Lewiston in 1929, at the beginning of the Great Depression. At that time, the company had 50 employees and 13,400 square feet of manufacturing space. The firm now employs over 200 people and occupies a 220,000-square-foot facility. Elmet makes top-quality, high-performance advanced materials and specialized refractory metal products, such as wire, filaments, and rods. Its products have numerous applications for a variety of industries. For instance, the company’s components and materials are used in electronic devices such as GPS units and digital music players and medical equipment like X-ray tubes.

Elmet supplies a wide range of customers, from IBM and Philips Lighting, to Veeco, which produces process equipment and metrology tools, and Varian, producers of medical equipment. These firms have turned to Elmet because of its high-quality products, attention to customer detail and satisfaction, and its efficient and stellar Maine work ethic. Additionally, what makes Elmet’s production method so effective is that the company uses raw materials instead of base materials, allowing employees to easily customize products based on consumer specifications. The company has also earned two critical certifications for quality and environmental standards from the International Organization for Standardization, ISO.

Though an 80-year-old company, Elmet Technologies is relatively new to global trade. It began only recently promoting its products abroad and now has clients in places as far away as Europe, Israel, and China. Elmet’s strategy is paying off and earning the company much-deserved recognition. Last Thursday, the Maine International Trade Center presented Elmet Technologies with its 2009 Exporter of the Year Award. The award demonstrates the determination and commitment of Elmet’s leaders in forging new international marketplaces for its extensive variety of products that serve a wide range of high-tech and emerging industries—from electronics and lighting, to aircraft and automobiles.

The Maine International Trade Center is Maine’s small business link to the rest of the world. It is a public-private partnership between the State of Maine and its businesses. The center’s goal is to increase international trade in Maine and in particular to assist Maine’s businesses in exporting goods and services. Clearly it sees in Elmet Technologies the entrepreneurial spirit and innovation that make Maine’s small businesses so unique and successful.

Elmet Technologies’ president and CEO, Jack Jensen, has summed up the company’s philosophy quite simply: “Listen. Create. Delight.” Based on the company’s record of success and customer satisfaction, this motto has served the company well in any language. I congratulate everyone at Elmet Technologies on their recent recognition and wish them continued exciting export opportunities in the years to come.

130TH ANNIVERSARY OF WORTHING, SOUTH DAKOTA

Mr. THUNE. Mr. President, today I recognize Worthing, SD. Founded in
MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

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

MESSAGE FROM THE HOUSE

At 11:32 a.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that the House has passed the following bills and concurrent resolution, in which it requests the concurrence of the Senate:

H.R. 31. An act to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

H.R. 40. An act to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe; to the Committee on Indian Affairs.

H.R. 2090. An act to designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building." to the Committee on Homeland Security and Governmental Affairs.

H.R. 2173. An act to designate the facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, as the "Carl B. Smith Post Office"; to the Committee on Homeland Security and Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC–1787. A communication from the Director of Regulations Management, National Cemetery Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Headstone and Marker Application Process" (RIN2900–AM35) received in the Office of the President of the Senate on June 29, 2009; to the Committee on Veterans' Affairs.

EC–1788. A communication from the Chief Counsel, Bureau of Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds" (Docket No. BFD GSR2009–05) received on May 29, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–1789. A communication from the Acting Administrator, Real Property Information Administration, Department of Energy, transmitting, pursuant to law, a report relative to the country of origin and sellers of uranium and uranium enrichment services purchased by owners and operators of U.S. civilian nuclear power reactors for calendar year 2008; to the Committee on Energy and Natural Resources.

EC–1790. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report relative to using private contractors to protect a designated wilderness area in Marin County, California; to the Committee on Energy and Natural Resources.

EC–1791. A communication from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "List of Approved Spent Fuel Storage Casks: HI–STORM Revision 6" (RIN3150–A960) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Environment and the Economy.

EC–1792. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration’s 2009 Annual Report on the Supplementary Security Income Program; to the Committee on Finance.

EC–1793. A communication from the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report on the Food and Drug Administration Advisory Committee Vacancies and Public Disclosures for Fiscal Year 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–1794. A communication from the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report relative to animal drug user fees and related expenses for Fiscal Year 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–1795. A communication from the Acting Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, the Office of Inspector General’s Semiannual Report for the period ending March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1796. A communication from the Chairman, Railroad Retirement Board, transmitting, pursuant to law, the Inspector General’s Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1797. A communication from the Secretary of the Interior, transmitting, pursuant to law, the Semiannual Report of the Department’s Inspector General for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1798. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the Office of Inspector General’s Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1799. A communication from the Acting Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the Office of Inspector General’s Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1800. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Inspector General’s Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1801. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the Office of Inspector General’s Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1802. A communication from the Secretary of Labor, transmitting, pursuant to law, the Office of Inspector General’s Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1803. A communication from the Chairman, Board of Governors, U.S. Postal Service, transmitting, pursuant to law, the Semiannual Report on the Audit, Investigative, and Security Activities of the U.S. Postal Service for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1804. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission’s Performance Budget for Fiscal Year 2010; to the Committee on Homeland Security and Governmental Affairs.


EC–1807. A communication from the Chairman, Council of the District of Columbia, MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent and referred as indicated:

H.R. 31. An act to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

H.R. 40. An act to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe; to the Committee on Indian Affairs.

H.R. 2090. An act to designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the “Frederic Remington Post Office Building.”

H.R. 2173. An act to designate the facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, as the “Carl B. Smith Post Office.”

transmitting, pursuant to law, a report on D.C. Act 18–80, “Newborn Safe Haven Temporary Act of 2009”; to the Committee on Homeland Security and Governmental Affairs.

EC–1808. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–82, “Department of Parks and Recreation Term Employee Appointment Temporary Amendment Act of 2009”; to the Committee on Homeland Security and Governmental Affairs.

EC–1809. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–82, “Rent Administrator Hearing Authority Temporary Amendment Act of 2009”; to the Committee on Homeland Security and Governmental Affairs.


EC–1813. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–86, “Retail Service Station Amendment Act of 2009”; to the Committee on Homeland Security and Governmental Affairs.

EC–1814. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Beatty and Goldfield, Nevada)” (MB Docket No. 08–68) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.


EC–1817. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–90, “Closing, Dedication and Designation of Public Streets at The Yards Act of 2009”; to the Committee on Homeland Security and Governmental Affairs.

EC–1818. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–96, “CEMI-Ridgecrest, Inc.–Walker Washington Community Center Real Property Tax Exemption and Equitable Real Property Tax Relieftaxbill” (MB Docket No. 07–2235) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1819. A communication from the Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, a report on D.C. Act 18–97, “NASA FAR Supplement to update NASA’s Mentor-Protege Program (RIN 2700–AD41); to the Committee on Commerce, Science, and Transportation.

EC–1820. A communication from the Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Sea Fishing Vessels Using Trawl Gear in the Gulf of Alaska” (RIN0648–XO96) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1821. A communication from the Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Sea Fishing Vessels Using Trawl Gear in the Gulf of Alaska” (RIN0648–XO96) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.


EC–1823. A communication from the Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Beatty and Goldfield, Nevada)” (MB Docket No. 08–68) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1824. A communication from the Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Trawl Catcher Vessels Participating in the Entry Level Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska” (RIN0648–XN36) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1825. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish and Pelagic Shelf Rockfish for Trawl Catcher Vessels Participating in the Entry Level Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska” (RIN0648–XN36) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1826. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Sea Fishing Vessels Using Trawl Gear in the Gulf of Alaska” (RIN0648–XO96) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1827. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Sea Fishing Vessels Using Trawl Gear in the Gulf of Alaska” (RIN0648–XO96) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1828. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Sea Fishing Vessels Using Trawl Gear in the Gulf of Alaska” (RIN0648–XO96) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1829. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Magnuson-Stevens Fishery Conservation and Management Act Amendments; Entry Level Rockfish Pacific Ocean Perch, and Pelagic Shelf Rockfish for Trawl Catcher Vessels Participating in the Entry Level Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska” (RIN0648–XP03) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1830. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2009 Gulf Commercial Fishery for Red Snapper” (RIN0648–XO96) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1831. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-grouper Fishery of the South Atlantic; Closure of the 2009 Commercial Fishery for Black Sea Bass in the South Atlantic; Trawl Gear in the Gulf of Mexico; Entry Level Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska” (RIN0648–XN36) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1832. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-grouper Fishery of the South Atlantic; Closure of the 2009 Commercial Fishery for Black Sea Bass in the South Atlantic; Trawl Gear in the Gulf of Mexico; Entry Level Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska” (RIN0648–XN36) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.
Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures” (RIN0648-AX24) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1835. A communication from the Acting Assistant Administrator for Fisheries, transmitting, pursuant to law, “Fishing Regulations; Northeastern United States: Atlantic Bluefin Tuna and Northeastern U.S. Atlantic and Gulf of Mexico Swordfish; 2009 Specifications for the Atlantic Bluefin Tuna Spiny Dogfish Fishery” (RIN0648-AX57) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1837. A communication from the Attorney General, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, rule entitled “Safety Zone; Use of Force Training Ships, San Pablo Bay, CA” ((RIN1625-AA00)(Docket No. USCG–2009–0300)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1838. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Copper Canyon Clean Up” ((RIN1625-AA00)(Docket No. USCG–2009–0242)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1839. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Cape Canyon Clean Up” ((RIN1625-AA00)(Docket No. USCG–2009–0242)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1840. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Paradise Point Fourth of July Fireworks; Mission Bay, San Diego, CA” ((RIN1625-AA00)(Docket No. USCG–2009–0125)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1841. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; June and July Northwestern Harbor Safety Zone; Northwest Harbor, San Clemente Island, CA” ((RIN1625-AA00)(Docket No. USCG–2009–0330)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1842. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safeopero; ESL Air and Water Wing, Lake Ontario, Ontario Beach Park, Rochester, NY” ((RIN1625-AA00)(Docket No. USCG–2009–0343)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1843. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI” ((RIN1625-AA00)(Docket No. USCG–2009–0089)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1844. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; F/V PATRIOT, Massachusetts Bay, MA” ((RIN1625-AA00)(Docket No. USCG–2009–0424)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1845. A communication from the Acting Assistant Administrator for Fisheries, transmitting, pursuant to law, “Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico Gulf of Mexico Fish Longline Restriction” (RIN0648-AX68) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1846. A communication from the Acting Assistant Administrator for Fisheries, transmitting, pursuant to law, “Fisheries of the Northeastern United States; 2009 Specifications for the Spiny Dogfish Fishery” (RIN0648-AX57) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. AKAKA, from the Committee on Veterans’ Affairs, with an amendment in the nature of a substitute and an amendment to the title—S. 467. A bill to increase, effective as of December 1, 2009, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes (Rept. No. 111–24).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEAHY for the Committee on the Judiciary—S. 467. A bill to increase, effective as of December 1, 2009, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes (Rept. No. 111–24).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ENSIGN (for himself, Mr. NELSON of Nebraska, Mr. MCCONNELL, Mr. SHELBY, Mr. VITTER, Mr. ROBERTS, Mr. GRAHAM, Mr. BROWNBACK, Mr. GREGG, Mr. VOINOVICH, Mr. WICKER, Mr. BUNNING, Mr. COCHRAN, Mr. CORNYN, Mr. THUNE, and Mr. CHAMBLISS) S. 1178. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; to the Committee on the Judiciary.

By Mr. AKAKA: S. 1181. A bill to provide for greater diversity within, and to improve policy direction and oversight of, the Senior Executive Service; to the Committee on Homeland Security and Governmental Affairs.

By Mr. WYDEN: S. 1186. A bill to provide for a demonstration project to examine whether community-level public health interventions can result in lower rates of chronic disease for individuals entering the Medicare program; to the Committee on Finance.

By Mr. DURBIN (for himself and Mr. BROWNBACK) S. 1183. A bill to authorize the Secretary of Agriculture to provide assistance to the Government of Haiti to end within 5 years the deforestation in Haiti and restore within 30 years the extent of tropical forest cover in existence in Haiti in 1990, and for other purposes; to the Committee on Foreign Relations.

By Mr. VITTER (for himself, Mr. ENSIGN, Mr. THUNE, Mr. DEMINT, Mr. BUNNING, Mr. ENZI, Mr. ROBERTS, and Mr. BARRASSO): S. 1184. A bill to amend the National Labor Relations Act to permit employers to pay higher wages to their employees; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGMAN: S. 1186. A bill to amend titles XVIII and XIX of the Social Security Act to ensure that low-income beneficiaries have improved access to health care under the Medicare and Medicaid programs; to the Committee on Finance.

By Mr. BINGMAN (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. HARKIN) S. 1186. A bill to amend title XVIII of the Social Security Act to eliminate the in-home restriction for Medicare coverage of mobility devices for individuals with expected long-term needs; to the Committee on Finance.

By Mrs. MURRAY: S. 1186. A bill to amend the Homeland Security Act of 2002 to authorize grants for use in response to homeland security events of national and international significance; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REED (for himself, Ms. MURKOWSKI, and Mr. WHITEHOUSE) S. 1186. A bill to amend the Public Health Service Act with respect to mental health services; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BAYH (for himself and Mr. BROWN) S. 1189. A bill to require the Secretary of Energy to conduct a study of the impact of energy and climate policies on the competitiveness of energy-intensive manufacturing and measures to mitigate those effects; to
the Committee on Energy and Natural Resources. By Mr. BINGAMAN (for himself and Mrs. HUTCHISON): S. 17. A bill to provide financial aid to local law enforcement officials along the Nation’s borders, and for other purposes; to the Committee on the Judiciary.

By Mr. BAYH:

S. 1191. A bill to require the Secretary of Energy to prepare a report on climate change and energy policy in the People’s Republic of China and in the Republic of India; to the Committee on Energy and Natural Resources.

By Mr. WYDEN (for himself, Ms. SNOWE, Mr. MURRAYS, Mr. MCCAIN, Mrs. GILLIBRAND, and Mr. ENISION):

S. 1192. A bill to restrict any State or local jurisdiction from imposing a new discriminatory tax on mobile wireless communications services, providers, or property; to the Committee on Finance.

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

S. 1193. A bill to amend title 49, United States Code, to enhance aviation safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. CANTWELL (for herself, Ms. SNOWE, Mr. ROCKEFELLER, and Mrs. HUTCHISON):

S. 1194. A bill to reauthorize the Coast Guard for fiscal years 2010 and 2011, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SPECTER (for himself and Mr. CASEY):

S. 1195. A bill to require the Secretary of Agriculture to carry out the Philadelphia universal feeding pilot program until the last day of the 2012-2013 school year of the School District of Philadelphia; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. MURRAYS (for herself and Ms. CANTWELL):

S. Res. 168. A resolution commending the University of Washington women’s softball team for winning the 2009 NCAA Women’s College World Series; considered and agreed to.

By Mr. MENENDEZ (for himself, Ms. SNOWE, Mrs. SHAHEEN, and Ms. MILUSKI):

S. Res. 169. A resolution expressing the sense of the Senate that the Government of the former Yugoslav Republic of Macedonia should work within the framework of the United Nations process with Greece to achieve longstanding United States and United Nations policy goals of finding a mutually acceptable composite name, with a geographical qualifier and for all international uses for the former Yugoslav Republic of Macedonia; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 211

At the request of Mr. BURR, the name of the Senator from Tennessee (Mr. AL EXENDER) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral on human services and volunteer services, and for other purposes.

S. 251

At the request of Mrs. HUTCHISON, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 251, a bill to amend the Communications Act of 1934 to permit targeted interference with mobile radio services within prison facilities.

S. 255

At the request of Mr. WHITEHOUSE, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 255, a bill to amend the Truth in Lending Act to empower the States to set the maximum annual percentage rates applicable to consumer credit transactions, and for other purposes.

S. 538

At the request of Mrs. LINCOLN, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 538, a bill to increase the recruitment and retention of school counselors, school social workers, and school psychologists by low-income local educational agencies.

S. 554

At the request of Mr. BROWN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 554, a bill to improve the safety of motorcoaches, and for other purposes.

S. 571

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 571, a bill to strengthen the Nation’s research efforts to identify the causes and cure of psoriasis and psoriatic arthritis, expand psoriasis and psoriatic arthritis data collection, and study access to and quality of care for people with psoriasis and psoriatic arthritis, and for other purposes.

S. 581

At the request of Mr. BENNET, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 581, a bill to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to require the exclusion of combat pay from income for purposes of determining eligibility for child nutrition programs and the special supplemental nutrition program for women, infants, and children.

S. 634

At the request of Mr. HARKIN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 634, a bill to amend the Elementary and Secondary Education Act of 1965 to improve standards for physical education.

S. 645

At the request of Mrs. LINCOLN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 645, a bill to amend title 22, United States Code, to authorize the Department of Defense share of expenses under the National Guard Youth Challenge Program.

S. 653

At the request of Mr. CARDIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 653, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the writing of the Star-Spangled Banner, and for other purposes.

S. 718

At the request of Mr. HARKIN, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Michigan (Ms. STabenow) were added as cosponsors of S. 718, a bill to amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

S. 758

At the request of Mr. BAUCUS, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 758, a bill to authorize the production of Saint-Gaudens Double Eagle ultra-high relief bullion coins in palladium to provide affordable opportunities for investments in precious metals, and for other purposes.

S. 799

At the request of Mr. DURBIN, the name of the Senator from New Hampshire (Mrs. SHARRON) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 799, a bill to designate as wilderness certain Federal portions of the red rock canyons of the Colorado Plateau and the Great Basin Deserts in the State of Utah for the benefit of present and future generations of people in the United States.

S. 823

At the request of Ms. SNOWE, the names of the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 823, a bill to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

S. 846

At the request of Mr. DURBIN, the names of the Senator from Montana (Mr. TESTER) and the Senator from Minnesota (Ms. KLOBUCAR) were added as cosponsors of S. 846, a bill to award a congressional gold medal to Dr. Muhammad Yunus, in recognition of his contributions to the fight against global poverty.

S. 883

At the request of Mr. KERRY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 883, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America’s highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States, to honor the American military men and women who have been recipients of the Medal of Honor, and to promote awareness of what the
Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history.

S. 908
At the request of Mr. McCONNELL, his name was added as a cosponsor of S. 908, a bill to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

At the request of Mr. BAYH, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 908, supra.

S. 947
At the request of Mrs. LINCOLN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 947, a bill to amend title XVIII of the Social Security Act to provide for the treatment of certain physician pathology services under the Medicare program.

S. 962
At the request of Mr. CARDIN, his name was added as a cosponsor of S. 962, a bill to authorize appropriations for fiscal years 2009 through 2013 to promote an enhanced strategic partnership with Pakistan and its people, and for other purposes.

S. 967
At the request of Mr. DURBIN, the name of the Senator from New Hampshire (Mrs. ShaHEEN) was added as a cosponsor of S. 967, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1023
At the request of Mr. DORGAN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1023, a bill to establish a non-profit corporation to communicate United States entry policies and otherwise promote leisure, business, and scholarly travel to the United States.

S. 1026
At the request of Mr. CORNYN, the names of the Senator from Florida (Mr. MARTINEZ), the Senator from Montana (Mr. TESTER) and the Senator from Tennessee (Mr. CORREK) were added as cosponsors of S. 1026, a bill to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of marked absentee ballots of absent overseas uniformed service voters, and for other purposes.

S. 1050
At the request of Mr. ROCKEFELLER, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1050, a bill to amend title XXVII of the Public Health Service Act to establish Federal standards for health insurance forms, quality, fair marketing, and honesty in out-of-network coverage in the group and individual health insurance markets, to improve transparency and accountability in those markets, and to establish a Federal Office of Health Insurance Oversight to monitor performance in those markets, and for other purposes.

S. 1067
At the request of Mr. FEINGOLD, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Illinois (Mr. BURRIS) were added as cosponsors of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord’s Resistance Army through a comprehensive strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord’s Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1099
At the request of Mr. COBURN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1099, a bill to provide comprehensive solutions for the health care system of the United States, and for other purposes.

S. 1116
At the request of Mr. HARKIN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 1116, a bill to amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to reauthorize and improve the safe routes to school program.

S. 1157
At the request of Mr. CONRAD, the names of the Senator from Utah (Mr. HATCH) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1157, a bill to amend title XVIII of the Social Security Act to protect and preserve access to health care for beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1198
At the request of Ms. STABENOW, the name of the Senator from Vermont (Mr. SANDERS) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of S. 1198, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 1160
At the request of Mr. SCHUMER, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1160, a bill to provide loss assistance for very low-income veterans.

S. 1171
At the request of Mr. PRYOR, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1171, a bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35-mile rule for designating critical access hospitals under the Medicare Program.

At the request of Mr. BROWNBACK, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. J. Res. 14, a joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States.

At the request of Mrs. LINCOLN, the name of the Senator from Nebraska (Mr. JOHNSON) and the Senator from Colorado (Mr. UDALL) were added as cosponsors of S. Res. 167, a bill commending the people who have sacrificed their personal freedoms to bring about democratic change in the People’s Republic of China and expressing sympathy for the families of the people who were killed, wounded, or imprisoned, on the occasion of the 20th anniversary of the Tiananmen Square Massacre in Beijing, China from June 3 through 4, 1989.

AMENDMENT NO. 1242
At the request of Mr. BAYH, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of amendment No. 1242 intended to be proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes.

AMENDMENT NO. 1245
At the request of Ms. STABENOW, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 1245 intended to be proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
By Mr. AKAKA:
S. 1180, a bill to provide for greater diversity within, and to improve policy regarding the execution of the President’s Executive Order regarding the Senior Executive Service; to the Committee on Homeland Security and Governmental Affairs.
Mr. AKAKA. Mr. President, I rise today to join my colleague in the House of Representatives, Congressman DANNY K. DAVIS, to reintroduce the Senior Executive Service Diversity Assurance Act of 2009. This legislation promotes greater diversity among the Federal Government’s elite corps of senior executives and establishes a central office of management for these top-level Federal executives. Last year, we introduced this bill. Unfortunately, the Senate was not able to pass the bill before the adjournment of the 110th Congress.

The Senior Executive Service, SES, is the most senior level of career civil servants in the Federal Government. Senior executives are essential to an efficient and effective Federal Government in management and operations. Over the next ten years, ninety percent of the career SES will be eligible to retire. As agencies begin to consider employees for SES positions, it is important that they develop pipelines into highly qualified candidate pools that represent diverse backgrounds, and ensure that applicants of all races, ethnicities, genders, and abilities be equally considered. According to reports by the Government Accountability Office, a diverse SES can bring a greater variety of perspectives and approaches to policy development, strategic planning, problem solving, and decision making.

A 2007 Federal Equal Opportunity Recruitment Program report by the Office of Personnel Management, OPM, showed that the percentage of minorities and women at senior pay levels in the Federal Government, including SES, is lower than in the total civilian labor force and the Federal workforce as a whole. According to a 2007 GAO report, only 15.8 percent of the SES was minorities compared to 32.8 percent of the entire workforce. The Senior Executive Service Diversity Assurance Act directly addresses this gap.

This legislation would require Federal agencies to submit a plan to OPM on how the agency is removing barriers to minorities, women, and individuals with disabilities to obtain appointments in the SES.

The bill encourages agencies, to the extent practicable, to include minorities, women, and individuals with disabilities on their Executive Resource Boards as well as other qualification review boards that evaluate SES candidates.

Furthermore, the legislation re-establishes the Senior Executive Service Resource Office, SESRO, at OPM, which was dissolved during an internal reorganization of OPM in 2003. This bill would restore SESRO’s responsibilities of overseeing and managing the corps of senior executives. SESRO would serve as a central resource for agencies and provide oversight of agency recruitment and candidate development. Additionally, it would be responsible for ensuring diversity within the SES through strategic partnerships, mentorship programs, and more stringent reporting requirements. For too long, ethnic minorities, women, and persons with disabilities have been under-represented and this bill attempts to reform shortcomings in the system.

In America’s workforce, we need leadership that reflects its varied cultures and backgrounds. A more diverse SES will better ensure that the executive management of the Federal Government is responsive to the needs, policies, and goals of the Nation.

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

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

S. 1180

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 “Senior Executive Service Diversity Assurance Act of 2009”.

SEC. 2. FINDINGS.

Congress finds that—

(1) according to the most recent findings from the Government Accountability Office—

(A) minorities made up 22.5 percent of the individuals serving at the GS-15 and GS-14 levels and 15.8 percent of the Senior Executive Service in 2007;

(B) women made up 34.3 percent of the individuals serving at the GS-15 and GS-14 levels and 29.1 percent of the Senior Executive Service in 2007; and

(C) although the number of career Senior Executive Service members increased from 6,110 in 2,000 to 6,555 in 2007, the representation of African American men in the career Senior Executive Service declined during that same period from 5.5 percent to 5.0 percent; and

(2) according to the Office of Personnel Management—

(A) black employees represented 6.1 percent of employees at the Senior Pay levels and 17.9 percent of the permanent Federal workforce, and 10 percent in the civil service;

(B) Hispanic employees represented 4.0 percent of employees at the Senior Pay levels and 7.9 percent of the permanent Federal workforce compared to 13.2 percent of the civil service labor force in 2008; and

(C) women represented 29.1 percent of employees at the Senior Pay levels and 41.2 percent of the permanent Federal workforce compared to 45.6 percent of the civil service labor force in 2008.

SEC. 3. DEFINITIONS.

In this Act—

(1) the term “Director” means the Director of the Office of Personnel Management;

(2) the term “Senior Executive Service” has the meaning given under section 2101a of the United States Code;—

(3) the terms “agency”, “career appointee”, and “career reserved position” have the meanings given under section 3132 of the United States Code; and

(4) the term “SES Resource Office” means the Senior Executive Service Resource Office established under section 4.

SEC. 4. SENIOR EXECUTIVE SERVICE RESOURCE OFFICE.

(a) Establishment.—Not later than 180 days after the date of the enactment of this Act, the Director shall establish within the Office of Personnel Management an office to be known as the Senior Executive Service Resource Office.

(b) Mission.—The mission of the SES Resource Office shall be—

(1) improve the efficiency, effectiveness, and productivity of the Senior Executive Service through policy formulation and oversight;

(2) advance the professionalism of the Senior Executive Service; and

(3) ensure that, in seeking to achieve a Senior Executive Service reflective of the Nation’s diversity, recruitment is from qualified individuals from appropriate sources.

(c) Functions.—

(1) In general.—The functions of the SES Resource Office are to—

(A) make recommendations to the Director with respect to regulations; and

(B) provide guidance to agencies, concerning the structure, management, and diverse composition of the Senior Executive Service.

(2) Specific functions.—In order to carry out the purposes of this section, the SES Resource Office shall—

(A) take such actions as the SES Resource Office considers necessary to manage and promote an efficient, elite, and diverse corps of senior executives by—

(i) creating policies for the management and improvement of the Senior Executive Service;

(ii) providing oversight of the performance, structure, and composition of the Senior Executive Service; and

(iii) providing guidance and oversight to agencies in the management of senior executives and candidates for the Senior Executive Service;

(B) be responsible for the policy development, management, and oversight of the Senior Executive Service pay and performance management system;

(C) develop standards for certification of each agency’s Senior Executive Service performance management system and evaluate all agency applications for certification;

(D) be responsible for coordinating, promoting, and monitoring programs for the development and training of senior executives, including the Senior Executive Service Federal Candidate Development Program;

(E) provide oversight of, and guidance to, agencies’ executive recruitment programs;

(F) be responsible for the administration of the qualifications review board;

(G) establish and maintain annual statistics in a form that renders such statistics useful to appointing authorities and candidates on—

(i) the total number of career reserved positions at each agency;

(ii) the total number of vacant career reserved positions at each agency;

(iii) the positions under clause (ii), the number for which candidates are being sought;

(iv) the amount of time a career reserved position is vacant;

(v) the amount of time it takes to hire a candidate into a career reserved position;

(vi) the number of individuals who have been certified in accordance with section 339(c) of title 5, United States Code, and the composition of that group of individuals with regard to race, ethnicity, sex, age, and individuals with disabilities;

(vii) the composition of the Senior Executive Service with regard to race, ethnicity, sex, age, and individuals with disabilities; and

(viii) the composition of executive selection boards with regard to race, ethnicity, sex, and individuals with disabilities; and
(ix) the composition of qualifications review boards with regard to race, ethnicity, sex, and individuals with disabilities;

(H) make available to the public through the Office of Personnel Management, the data collected under subparagraph (G);

(I) establish and promote mentoring programs for the Senior Executive Service, including candidates who have been certified as having the executive qualifications necessary for initial appointment as a career appointee under the Office of Personnel Management, the data collected under section 3390(a) of title 5, United States Code;

(J) conduct a continuing program for the recruitment of candidates of members of ethnic and cultural minority groups, and individuals with disabilities for Senior Executive Service positions, with special efforts directed at recruiting from educational institutions, professional associations, and other sources;

(K) advise agencies on the best practices for an agency in utilizing or consulting with an agency’s equal employment or diversity office or official (if the agency has such an office or official) with regard to the agency’s Senior Executive Service appointments process; and

(L) evaluate and implement strategies to ensure that agencies conduct appropriate outreach to other agencies to identify candidates for Senior Executive Service positions.

(d) Protection of individually identifiable information.—For purposes of subsection (c)(2)(H), the SES Resource Office shall combine data for any agency that is not named in section 901(b) of chapter 31, United States Code, to protect individually identifiable information.

(e) Cooperation of agencies.—The head of each agency shall provide the Office of Personnel Management with such information as the Office may require in order to carry out subsection (c)(2)(G).

(f) Staffing.—The Director of the Office of Personnel Management shall make such appointments as necessary to staff the SES Resource Office.

SEC. 5. CAREER APPOINTMENTS.

(a) Promoting Diversity in the Career Appointments Process.—Section 3393(b) of title 5, United States Code, is amended by inserting after the first sentence the following: “In establishing an executive resources board or office or official (if the agency has such an office or official) with regard to the agency’s Senior Executive Service appointments process, in subsection (c)(2)(H) of the SES Resource Office, shall combine data for any agency that is not named in section 901(b) of chapter 31, United States Code, to protect individually identifiable information.”

(b) Summary and Evaluation.—Not later than 180 days after the deadline for the submission of any report or update under subsection (a), the Director shall transmit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report summarizing and evaluating the agency plans or updates (as the case may be) so submitted.

(c) Coordination.—The Office of Personnel Management shall, in carrying out subsections (a) and (b), consult with the Office of Personnel Management, the data collected under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) and section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and determine how agency reporting can be performed so as to be consistent with, but not duplicative of, such sections and any other similar requirements.

By Mr. Wyden:

S. 1181. A bill to provide for a demonstration project to examine whether community-based prevention strategies and interventions can result in lower rates of chronic disease for individuals entering the Medicare program; to the Committee on Finance.

Mr. WYDEN. Mr. President, today I am introducing the Healthy Living, Healthy Aging Demonstration Project Act of 2009. This act will provide for a demonstration project to examine whether community-level public health interventions can result in lower rates of chronic disease for individuals who are about to enter the Medicare program. Prevention is a key to health at any age, but especially later in life. I am proud to be introducing a cornerstone of health care reform today. American people and the U.S. Government need this prevention act for two main reasons. Health care costs continue to rise exponentially and chronic diseases are the number one cause of death and disability in the U.S. One hundred thirty-three million Americans, representing 45 percent of the total population, have at least one chronic disease. Chronic diseases account for more than 1.7 million Americans each year, and are responsible for 7 out of every 10 deaths in the U.S. Furthermore, the vast majority of cases of chronic disease could be better prevented or managed.

The World Health Organization has estimated that if the major risk factors for chronic disease were eliminated, at least 80 percent of all heart disease, stroke, and type 2 diabetes would be prevented, and that more than 40 percent of cancer cases would be prevented. In addition, depressive disorders are common, chronic, and costly. The World Health Organization has identified major depression as the fourth leading cause of worldwide disease in 1990, causing more disability than even certain types of heart disease. Research shows that mental health screenings after disease diagnosis for diabetic patients can be cost effective and improve health.

The Healthy Living, Healthy Aging Demonstration Project Act of 2009 will address these costly and chronic health problems before people enter the Medicare program. It calls for the Secretary of Health and Human Services to provide 5-year grants to community partnerships that include the state or local public health department and other community stakeholders such as health centers, providers, small businesses, and rural health clinics to fund evidence-based community-level prevention and wellness strategies. The types of community-based prevention strategies we are looking at in this demonstration project include group exercise programs, programs and services recommended by the Task Force on Community Preventive Services.

The Secretary, acting through the Administrator of the Centers for Medicare and Medicaid Services, in partnership with the Director of the Centers for Disease Control and Prevention, CDC would implement the demonstration program to test whether these public health interventions targeting community-based prevention programs result in lower rates of chronic disease and reduce costs for the Medicare program. One assessment level of the act will measure the effects of adopting healthy lifestyle strategies on specific individual programs and services recommended by the Task Force on Community Preventive Services.
health screening conducted by the state or local public health department or its designee. An individual health screening will include the appropriate test for diabetes, high blood pressure, high cholesterol, obesity, and tobacco use. Insured individuals who screen positive for disease or obesity would be referred for treatment and for mental health screening and treatment to their existing providers or integrated providers. Individuals identified with chronic disease risk factors, such as high blood pressure or obesity, would be engaged in the community health interventions funded through the demonstration, such as walking programs, group exercise classes, or anti-smoking programs. Uninsured individuals who screen positive for chronic disease would be referred to the pre-selected clinical referral source for the demonstration site. Uninsured individuals who do not screen positive for chronic disease will receive information on healthy lifestyle choices and may also enroll in community level prevention interventions.

This program will not only conduct community-based prevention strategies, screenings and health assessments, but also help support follow-up care for uninsured individuals identified with chronic diseases, including determining eligibility for public programs.

I would like to thank Dr. Mary Poulos from the College, who has been working in my office through the American Psychological Association and the American Association for the Advancement of Science, and Daniella Gratale from Trust for America’s Health, for their work on this important prevention bill. I urge all of my colleagues to support this important legislation to help Americans adopt the healthiest life-styles possible and to prevent chronic diseases in later life.

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

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

S. 181

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 “Healthy Living and Health Aging Demonstration Project Act of 2009”.

SEC. 2. FINDINGS. Congress finds the following:

(1) Chronic diseases are the leading cause of death and disability in the United States. In 2005, 7 in every 10 deaths are attributable to chronic disease, and more than 1.7 million Americans die each year. Approximately 131,000,000 Americans, representing 45 percent of the Nation’s population, have at least 1 chronic disease.

(2) In 2007, the United States spent over $2,200,000,000,000 on health care, with 75 cents of every dollar spent on treating chronic disease. In public programs, treatment for chronic diseases constitutes an even higher percentage of total spending, with 83 cents of every dollar spent by Medicaid programs and more than 95 cents of every dollar spent by the Medicare program going towards costs related to chronic disease.

(3) Since 1967, the rate of obesity in the United States has doubled, accounting for a 20 to 30 percent increase in health care spending. Additionally, the percentage of young Americans who are overweight has tripled since 1980. If the prevalence of obesity is not reduced by 2030, health care spending would be nearly 10 percent lower per person, for a total savings of nearly $200,000,000,000.

(4) The vast majority of cases of chronic disease could be better prevented or managed. The World Health Organization has estimated that if the major risk factors for chronic diseases were eliminated, at least 80 percent of all cases of heart disease, stroke, and type 2 diabetes could be prevented, while also averting more than 40 percent of cancer cases.

(5) Depressive disorders are also becoming increasingly common, chronic, and costly. In 2000, the World Health Organization identified major depression as the fourth leading cause of the disease worldwide, leading to more cases of disability than ischemic heart disease, stroke, or diabetes. Research has shown that mental health screenings following disease diagnosis for diabetic patients can improve health while remaining cost-effective.

(6) A report by the Trust for America’s Health found that an annual investment of $10 per person in proven community-based programs to increase physical activity, improve nutrition, and prevent tobacco use and smoking could, within 5 years, save the United States more than $126,000,000 annually, with savings of more than $5,000,000,000 for Medicare and $1,900,000,000 for Medicaid, as well as over $9,000,000,000 in savings for private health insurance payers.

SEC. 3. DEMONSTRATION PROJECT FOR COMMUNITY-LEVEL PUBLIC HEALTH INTERVENTIONS.

(a) DEFINITIONS. —In this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Centers for Medicare and Medicaid Services.

(2) CHRONIC DISEASE OR CONDITION.—The term “chronic disease or condition” means diabetes, hypertension, pulmonary diseases (including emphysema and chronic obstructive pulmonary disease), coronary artery disease, heart disease, stroke, cancer, kidney disease, liver disease, or any other disease or condition as determined by the Secretary of Health and Human Services.

(3) COMMUNITY-BASED PREVENTION AND INTERVENTION STRATEGY.—The term “community-based prevention and intervention strategy” means programs and services intended to prevent or reduce the incidence of chronic disease, including walking programs, group exercise classes, anti-smoking programs, healthy eating programs, increased access to nutritious foods, programs and services that have been recommended by the Task Force on Community Preventive Services, and any programs or services that have been proposed by an eligible partnership and certified by the Director of the Centers for Disease Control and Prevention as evidence-based.

(4) DIRECTOR.—The term “Director” means the Director of the Centers for Disease Control and Prevention.

(5) MEDICARE.—The term “Medicare” means the Federal health insurance program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) PRE-MEDICARE ELIGIBLE INDIVIDUAL.—The term “pre-Medicare eligible individual” means an individual who has attained age 55, but not age 65.

(7) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(b) ESTABLISHMENT.—

(1) IN GENERAL. —The Secretary, acting through the Administrator and in consultation with the Director, shall establish a demonstration project under which eligible partnerships, as described in subsection (d)(1), are awarded grants to examine whether community-based prevention and intervention strategies targeted towards pre-Medicare eligible individuals, result in—

(A) lower rates of chronic diseases and conditions after such individuals become eligible for benefits under Medicare; and

(B) lower costs under Medicare.

(2) FEDERAL AGENCY RESPONSIBILITIES.—

(A) CENTERS FOR MEDICARE & MEDICAID SERVICES.—The Administrator shall have primary responsibility for administering and evaluating the demonstration project established under this section.

(B) CENTERS FOR DISEASE CONTROL AND PREVENTION.—The Director shall—

(i) certify that community-based prevention and intervention strategies proposed by eligible partnerships are evidence-based;

(ii) administer and provide grants for health screenings and risk assessments and community-based prevention and intervention strategies conducted by eligible partnerships; and

(iii) provide grants to designated clinical referral sites (as described in subsection (d)(1)(B)(ii)(I)) for reimbursement of administrative costs associated with their participation in the demonstration project.

(c) DURATION AND SELECTION OF PARTNERSHIPS.

(1) DURATION.—The demonstration project shall be conducted for a 5-year period, beginning not later than 2010.

(2) NUMBER OF PARTNERSHIPS.—The Administrator, in consultation with the Director, shall select not more than 6 eligible partnerships.

(3) SELECTION OF PARTNERSHIPS.—Eligible partnerships shall be selected by the Administrator in a manner that gives priority to partnerships that include employers (as described in subsection (d)(1)(C)).

(d) ELIGIBLE PARTNERSHIPS.—

(1) DESCRIPTION.—

(A) IN GENERAL.—Subject to subparagraph (C), for purposes of this section, an eligible partnership is a partnership that submits an approved application to participate in the demonstration project under this section and includes both of the entities described in subparagraph (B).

(B) REQUIRED ENTITIES.—An eligible partnership shall consist of a partnership between the following:

(i) A State or local public health department that shall—

(I) serve as the lead organization for the eligible partnership;

(II) develop appropriate community-based prevention and intervention strategies and present such strategies to the Director for certification; and

(III) administer certified community-based prevention and intervention strategies and conduct such strategies in association with local community organizations.

SEC. 4. DURATIONS.

(a) IN GENERAL.—The demonstration project shall be conducted for a 5-year period, beginning not later than 2009.

(b) CENTERS FOR MEDICARE & MEDICAID SERVICES.—The Administrator shall have primary responsibility for administering and evaluating the demonstration project established under this section.

(c) DURATION AND SELECTION OF PARTNERSHIPS.—

(1) DURATION.—The demonstration project shall be conducted for a 5-year period, beginning not later than 2009.

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(i) A State or local public health department that shall—

(I) serve as the lead organization for the eligible partnership;

(II) develop appropriate community-based prevention and intervention strategies and present such strategies to the Director for certification; and

(III) administer certified community-based prevention and intervention strategies and conduct such strategies in association with local community organizations.
(i) A medical facility as deemed appropriate by the Administrator, including health centers (as described under section 330 of the Public Health Service Act (42 U.S.C. 256b));
(ii) a hospital, a rural health clinic (as described in section 1601(aa)(2) of the Social Security Act (42 U.S.C. 1395aa(2))), that shall—
(I) serve as the designated clinical referral site for medical services, as described in subsection (e)(4)(B)(i);
(II) provide assistance to the designated public health department with organization and coordination of individual health screenings and risk assessments, as described in subsection (e)(3);
(III) collect payment for medical treatment and services that have been provided to individuals under the demonstration project in a manner that is consistent with State law and applicable clinic policy; and
(IV) provide mental health services or obtain an agreement with a designated mental health provider for referral and provision of such services.
(C) Optional Entities.—An eligible partnership may include other organizations as practicable and necessary to assist in community based prevention efforts and to engage health care providers, insurers, employers, and other community stakeholders in meeting the goals of the demonstration project.
(2) An eligible partnership that desires to participate in the demonstration project shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.
(e) Use of Funds.—
(1) In General.—An eligible partnership shall use funds received under this section to conduct community-based prevention and intervention strategies and health screenings and risk assessments for pre-Medicare eligible individuals from a diverse selection of ethnic backgrounds and income levels.
(2) Community-Based Prevention and Intervention Strategy.—An eligible partnership, acting through the State or local health department, shall promote healthy lifestyle choices among pre-Medicare eligible individuals by implementing and conducting a certified community-based prevention and intervention strategy that shall be made available to all such individuals.
(3) Individual Health Screenings and Risk Assessments.—An eligible partnership, acting through the State or local health department (or an appropriately designated facility), shall agree to provide the following:
(A) Screenings for Chronic Diseases and Conditions.—Individual health screenings for chronic diseases or conditions, which shall include appropriate tests for—
(1) diabetes;
(ii) high blood pressure;
(iii) high cholesterol;
(iv) body mass index;
(v) physical inactivity;
(vi) poor nutrition;
(vii) tobacco use; and
(viii) any other chronic disease or condition as determined by the Director.
(B) Mental Health Screenings.—A mental health screening and, if appropriate, referral for additional mental health services, for any individual who has been screened and diagnosed with a chronic disease or condition.
(4) Clinical Treatment for Chronic Diseases.—The eligible partnership shall agree to provide the following:
(A) Treatment and Prevention Referrals for Insured Individuals.—To refer an individual determined to be covered under a health insurance program who has been screened and diagnosed with a chronic disease or chronic disease risk factors (including high blood pressure, high cholesterol, obesity, or tobacco use)—
(i) to a provider under such program for further medical or mental health treatment; and
(ii) for enrollment in an appropriate community-based prevention and intervention strategy program.
(B) Treatment and Prevention Referrals for Uninsured Individuals.—To refer an individual determined to be without coverage under a health insurance program who has been screened and diagnosed with chronic disease or chronic disease risk factors (including high blood pressure, high cholesterol, obesity, or tobacco use) to the designated clinical referral site—
(i) for determination of eligibility for public health programs, or appropriate treatment (including referrals to medical services) pursuant to the facility’s existing authority and funding and in accordance with applicable fees and payment collection as described in subsection (d)(1)(B)(iii); and
(ii) for enrollment in an appropriate community-based prevention and intervention strategy program.
(h) Reporting.—
(1) Progress Report.—Not later than 3 years after implementation of the demonstration project, the Secretary shall prepare and submit a report to the Congress, including—
(A) the progress and results of any activities conducted under the demonstration project; and
(B) identification of health indicators (such as improved diet or increased physical activity) that have been determined to be associated with controlling or reducing the level of chronic disease for pre-Medicare eligible individuals.
(2) Final Report.—Not later than 18 months after completion of the demonstration project, the Secretary shall prepare and submit a final report and evaluation of the project to Congress, including—
(A) the results of the assessment conducted under subsection (g)(2);
(B) a description of community-based prevention and intervention strategies that have been determined to be effective in controlling or reducing the level of chronic disease for pre-Medicare eligible individuals;
(C) calculation of potential savings under Medicare based upon a comparison of chronic disease rates between the populations targeted under the demonstration project and the matched control group; and
(D) recommendations for such legislation and administrative action as the Secretary determines appropriate.
(i) Authorization of Appropriations.—
For the purpose of carrying out the demonstration project established under this section, there is authorized to be appropriated $30,000,000 for the period of fiscal years 2010 through 2016.

Signed to prevent or treat chronic diseases or conditions, which shall—
A related population-based design that compares those populations targeted under the demonstration project with a matched control group; and
(A) a population-based design that measures changes in health indicators (including improved diet or increased physical activity) and health outcomes in the targeted populations who participated in individual health risk assessments and, prior to completion of the demonstration project, became eligible for benefits under Medicare.

By Mr. DURBIN (for himself and Mr. BROWNBACK):
S. 1183. A bill to authorize the Secretary of Agriculture to provide assistance to the Government of Haiti to end within 5 years the deforestation in Haiti and restore within 30 years the extent of tropical forest cover in existence in Haiti in 1990, and for other purposes; to the Committee on Foreign Relations.

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

There being no objection, the text of the bill was ordered to be printed in the Record.

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 “Haiti Restoration Act of 2009.”

SEC. 2. FINDINGS; PURPOSE.
(a) Findings.—Congress finds that—
(1) the established policy of the Federal Government is to support and seek protection of tropical forests around the world;
(2) tropical forests provide a wide range of benefits, including—
(A) harboring a major portion of the biological and terrestrial resources of Earth and providing habitats for an estimated 10,000,000 plant and animal species, including species essential to medical research and agricultural productivity;
tropical reforestation efforts would provide new sources of jobs, income, and investments in Haiti by—
(A) providing employment opportunities in tree seedling programs, coastal tree planting and management, sustainable agricultural initiatives, sustainable and managed timber harvesting, and wood products milling and finishing;
(B) enhancing community enterprises that generate income through the trading of sustainable forest resources, many of which exist on small scales in Haiti and in the rest of the region.
(b) PURPOSE.—The purpose of this Act is to provide assistance to the Government of Haiti to develop and implement nationally appropriate policies and actions—
(1) to reduce deforestation and forest degradation in Haiti; and
(2) increase annual rates of afforestation and reforestation in a measurable, reportable, and verifiable manner—
(A) to eliminate within 5 years after the date of enactment of this Act any further net deforestation of Haiti; and
(B) to restore within 30 years after the date of enactment of this Act the forest cover of Haiti to the level that the forest cover had occupied in 1990.

TITLE I—FORESTATION ASSISTANCE TO GOVERNMENT OF HAITI

SEC. 101. FORESTATION ASSISTANCE.

(a) AUTHORITY OF SECRETARY.—

(1) IN GENERAL.—In accordance with paragraph (2), the Secretary, in consultation with the Administrator, may offer to enter into agreements with the Government of Haiti to provide financial assistance, technology transfers, or capacity building assistance for the conduct of activities to develop and implement 1 or more forestation proposals under paragraph (2) —
(A) to reduce the deforestation of Haiti; and
(B) to increase the rates of afforestation and reforestation in Haiti.

(2) PROPOSALS.—

(A) IN GENERAL.—To be eligible for assistance under paragraph (1), the Government of Haiti shall—
(i) in accordance with the Secretary 1 or more proposals that contain—
(I) a description of each policy and initiative to be carried out using the assistance; and
(II) adequate documentation to ensure, as determined by the Secretary, that—
(aa) each policy and initiative will be—
(A) designed and implemented in a manner by which to improve the governance of forests by building governmental capacity to be more transparent, inclusive, accountable, and coordinated in decisionmaking processes; and
(B) independent and participatory forest monitoring.

(B) DETERMINATION OF COMPATIBILITY WITH CURRICULUM PROGRAMS.—In evaluating each proposal under subparagraph (A), the Secretary shall ensure that each policy and initiative described in the proposal submitted by the Government of Haiti under that subparagraph is compatible with—
(i) broader development, poverty alleviation, and natural resource conservation objectives and initiatives in Haiti; and
(ii) the development, poverty alleviation, disaster risk management, and climate resilience programs of the Department of Agriculture.

(b) ELIGIBLE ACTIVITIES.—Any assistance received by the Government of Haiti under subsection (a)(1) shall be utilized to implement a proposal developed under subsection (a)(2), which may include—
(1) the provision of technologies and assistance for activities to reduce deforestation or increase afforestation and reforestation rates, including—
(A) fire reduction initiatives;
(B) forest law enforcement initiatives;
(C) the development of timber tracking systems;
(D) the development of cooking fuel substitute initiatives;
(E) initiatives to increase agricultural productivity;
(F) tree-planting initiatives; and
(G) programs that are designed to focus on market-based solutions, including programs that leverage the international carbon-offset market.

(2) the enhancement and expansion of governmental and nongovernmental institutional capacity to effectively design and implement a proposal developed under subsection (a)(2) through initiatives, including—
(A) the establishment of transparent, accountable, and inclusive decisionmaking processes relating to the governance of forests by building governmental capacity to be more transparent, inclusive, accountable, and coordinated in decisionmaking processes; and
(B) the promotion of enhanced coordination among ministries and agencies responsible for agroecological zoning, mapping, land planning and permitting, sustainable agriculture, forestry, and law enforcement; and

(3) the clarification of land tenure and resource rights of affected communities, including local communities and indigenous peoples; and

(4) the development and support of institutional capacity to measure, verify, and report the activities carried out by the Government of Haiti to reduce deforestation and increase afforestation and reforestation rates through the use of appropriate methods, including—
(A) the use of best practices and technological means to monitor any change in the forest cover of Haiti;
(B) the monitoring of the impacts of policies and initiatives on—
(i) affected communities; and
(ii) the biodiversity of the environment of Haiti; and

(5) the health of the tropical forests of Haiti; and

(6) the Government of Haiti shall establish and enforce legal regimes, standards, and safeguards—
(aa) to prevent violations of human rights and land and resource rights of local communities and indigenous people; and
(bb) to prevent harm to vulnerable social groups; and

(c) IMPLEMENTATION.—The Secretary shall—

(1) to reduce deforestation and forest degradation in Haiti; and
(2) increase annual rates of afforestation and reforestation in a measurable, reportable, and verifiable manner—

(A) the clarification of land tenure and resource rights of affected communities, including local communities and indigenous peoples; and

(B) forest law enforcement initiatives;

(C) the development of cooking fuel substitute initiatives;

(D) initiatives to increase agricultural productivity;

(E) tree-planting initiatives; and

(F) programs that are designed to focus on market-based solutions, including programs that leverage the international carbon-offset market.

(2) the enhancement and expansion of governmental and nongovernmental institutional capacity to effectively design and implement a proposal developed under subsection (a)(2), which may include—

(A) the establishment of transparent, accountable, and inclusive decisionmaking processes relating to the governance of forests by building governmental capacity to be more transparent, inclusive, accountable, and coordinated in decisionmaking processes; and

(B) the promotion of enhanced coordination among ministries and agencies responsible for agroecological zoning, mapping, land planning and permitting, sustainable agriculture, forestry, and law enforcement; and

(3) the clarification of land tenure and resource rights of affected communities, including local communities and indigenous peoples; and

(4) the development and support of institutional capacity to measure, verify, and report the activities carried out by the Government of Haiti to reduce deforestation and increase afforestation and reforestation rates through the use of appropriate methods, including—

(A) the use of best practices and technological means to monitor any change in the forest cover of Haiti;

(B) the monitoring of the impacts of policies and initiatives on—
(i) affected communities; and

(ii) the biodiversity of the environment of Haiti; and

(C) independent and participatory forest monitoring.

June 4, 2009
There are authorized to be appropriated such...munity and indigenous people of Haiti.

(e) ADDITIONAL ASSISTANCE.—The Secretary may provide financial and other assistance to nongovernmental stakeholders to...the difficulty of reforestation in Haiti, in-...tions to develop plans for sustainable use of such tropical forests.

(f) MANAGEMENT OF PROTECTED AREAS.—Each recipient of a grant under subsection (a) shall participate in the ongoing management of the area or areas protected pursuant to such grant.

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

Mr. BINGAMAN: S. 1185. A bill to amend titles XVIII and XIX of the Social Security Act to ensure that Low-income beneficiaries have improved access to health care under the Medicare and Medicaid programs...Mr. BINGAMAN. Mr. President, I rise today to introduce the Medicare Financial Stability for Beneficiaries Act of 2009.

This legislation would ensure that low-income Medicare beneficiaries can access the benefits to which they are entitled through one of the Medicare Savings Programs, MSP, and/or the Part D Low-Income...More than 13 million Medicare benefi-...nate information about the effectiveness of the demonstration projects assisted under this section.

SEC. 202. FOREST PROTECTION GRANTS.

Chapter 7 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2281 et seq.) is amended by inserting after section 466 the following new section:

"SEC. 467. PILOT PROGRAM FOR HAITI.

"(a) SUBMISSION OF LIST OF AREAS OF SEVERELY DEGRADED NATURAL RESOURCES.—The Administrator of the Agency for International Development, in cooperation with nongovernmental conservation organizations, shall invite the Government of Haiti to submit a list of areas within the territory of Haiti in which tropical forests are seriously degraded or threatened.

(b) REVIEW OF LIST.—The Administrator shall assess the list submitted by the Government of Haiti under subsection (a) and...future sustainable use of those areas.

(c) GRANT PROGRAM.—(1) GRANTS AUTHORIZED.—The Administrator of the Agency for International Development is authorized to make grants, in consultation with the International Forestry Division of the Department of Agriculture and on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of the Government of Haiti in exchange for commitments by the Government of Haiti to restore or maintain the existing forest coverage in areas identified in the list submitted by the Administrator pursuant to paragraph (b).

(2) CAPSULE.—The Secretary shall give preference to applicants that propose—

(A) to develop market-based solutions to the...the benefits to which they are entitled through one of the Medicare Savings Programs, MSP, and/or the Part D Low-Income...More than 13 million Medicare benefi-...nate information about the effectiveness of the demonstration projects assisted under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.
FPL, and are eligible for assistance with their Medicare costs. Another 6 million have incomes under 200 percent of FPL. These nearly 20 million beneficiaries are poorer than other Medicare beneficiaries. They also tend to be sicker, more isolated and have limited educational and economic opportunities. Populations are more in need of medical and other health-related services, and they benefit in both access and health outcomes from financial assistance with their out-of-pocket costs.

Although seniors and younger people with disabilities would benefit tremendously from greater access to needed health care services and financial savings, the Congressional Budget Office has estimated that about 67 percent to 87 percent of individuals eligible for various MSP services do not receive benefits. Additionally, the Centers for Medicare & Medicaid Services state that more than 13 million individuals are eligible for Part D LIS but only about 11 million are enrolled. Most of those 9 million get the subsidy automatically without having to apply, due to their eligibility for other programs.

The lives of low-income beneficiaries would improve significantly with improvements to the financial assistance provided by these important programs. Barriers to enrollment in MSP and LIS include: lack of effective outreach, lack of knowledge of the programs, language issues, social and physical isolation, restrictive eligibility limits, income and asset documentation complexities, and other daunting application requirements. Another major barrier is the lack of alignment of eligibility rules and application processes between MSP and LIS, although both programs serve the same general population.

The Medicare Financial Stability for Beneficiaries Act of 2009 decreases these barriers through:

1. Expanding outreach by eliminating the recurring short-term re-authorizations of one of the MSPs—the Qualified Individual, QI, program and the roller-coaster eligibility/loss of eligibility some beneficiaries face due to the effects of the subsidies on eligibility for other benefits.

2. Increasing access to financial assistance for low-income beneficiaries. Research supports the conclusion that financial assistance results in greater access to needed health outcomes for low-income beneficiaries. Currently full assistance is available only for those beneficiaries with incomes up to 135 percent of the Federal Poverty Level, 135 percent FPL is $2128/month for an individual with very limited assets, about $8,000 for an individual); much more limited assistance is available for those with incomes up to 150 percent of FPL. People with low incomes but some savings may be disqualified altogether. Our bill increases income eligibility up to 150 percent of FPL for full benefits and 200 percent FPL for partial benefits and uses a single asset standard for all programs of $27,500 for an individual. Increasing the asset test for both MSP and LIS and increasing income eligibility levels will improve health outcomes for millions more seniors and younger people with disabilities.

3. Aligning the rules for MSP and LIS programs by cross-deeming so that qualifying for one program would automatically qualify an individual for the other programs. Currently, income and asset eligibility rules for MSP and LIS are similar, but not identical. Individuals eligible for MSP benefits are deemed eligible for LIS, without having to apply or take any other action. The reverse, however, is not true. Greater alignment of the rules of both programs makes cross-deeming sensible, and ensures that individuals will receive both benefits regardless of where they first seek assistance. The legislation will also assist LIS beneficiaries in receiving Supplemental Nutritional Assistance Program, SNAP, food stamp, and vice versa.

4. Simplifying outreach and enrollment for low-income Medicare programs by authorizing the Social Security Administration to have access to Internal Revenue Service records to identify potentially eligible beneficiaries; by making more materials, including applications, available in additional languages; and by other simplifications of the application process. These provisions will benefit the millions of Americans who desperately need assistance, and will cut down on unnecessary and duplicative work for the Social Security Administration and for State Medicaid agencies.

There is strong support for this important legislation from many organizations, including the American Association of Retired Persons, National Senior Citizens Law Center, Medicare Rights Center, Center for Medicare Advocacy, Inc. Families USA, National Council on Aging, National Patient Advocate Foundation, American Federation of Labor and Congress of Industrial Organizations, APl–CIO, and the National Committee to Preserve Social Security and Medicare.

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

There being no objection, the text of the bill is ordered to be printed in the RECORD.

SEC. 1. SHORT TITLE. TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Medicare Financial Stability for Beneficiaries Act of 2009”.

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

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<thead>
<tr>
<th>Section</th>
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<td>Sec. 3</td>
<td>Cost-sharing protections for low-income subsidy-eligible individuals</td>
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S. 1138

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Medicare Financial Stability for Beneficiaries Act of 2009”.

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SEC. 2. ELIGIBILITY FOR OTHER PROGRAMS.


(1) in subparagraph (A), by striking “subparagraph (F)” and inserting “paragraphs (F) and (H)”;

(2) by adding at the end of the following new subparagraph:

“(H) DISREGARD OF PREMIUM AND COST-SHARING SUBSIDIES FOR PURPOSES OF FEDERAL AND STATE PROGRAMS.—Notwithstanding any other provision of law, any premium or cost-sharing subsidy with respect to a subsidy-eligible individual under this section shall not be considered income for determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit program referred to in subsection (a) or (b); or (c) of such section;”.

(b) MSP.—Section 1505(p) of the Social Security Act (42 U.S.C. 1395w–114(p)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following new paragraph:

“(6) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY MEDICAL ASSISTANCE FOR SOME OR ALL MEDICARE COST-SHARING UNDER THIS TITLE SHALL NOT BE CONSIDERED INCOME FOR DETERMINING ELIGIBILITY FOR, OR THE AMOUNT OF ASSISTANCE OR BENEFITS PROVIDED UNDER, ANY OTHER PUBLIC BENEFIT PROVIDED UNDER FEDERAL LAW OR THE LAW OF ANY STATE OR POLITICAL SUBDIVISION THEREOF.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to eligibility for benefits on or after January 1, 2010.

SEC. 3. COST-SHARING PROTECTIONS FOR LOW-INCOME SUBSIDY-ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 1860d–14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)) is amended—
(1) in paragraph (1)(D), by adding at the end the following new clause:

"(iv) OVERALL LIMITATION ON COST-SHARING.—In the case of all such individuals, a limitation on aggregate cost-sharing under this part for a year not to exceed 2.5 percent of income."; and

(2) in paragraph (2), by adding at the end the following new subparagraph:

"(F) OVERALL LIMITATION ON COST-SHARING.—A limitation on aggregate cost-sharing under this part for a year not to exceed 2.5 percent of income.".

(b) Effective Date.—The amendments made by subsection (a) shall apply as of January 1, 2010.

SEC. 4. MODIFICATION OF RESOURCE STANDARDS FOR DETERMINATION OF ELIGIBILITY FOR LIS; NO CONSIDERATION OF PENSION OR RETIREMENT PLAN IN DETERMINATION OF RESOURCES.

(a) Eliminating the Replication of Resource Standards.—

(1) In General.—Section 1860D–14(a)(3)(A)(iii) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)(A)(iii)) is amended by striking "meets the" and all that follows through the period at the end and inserting "is adequate for the maintenance of an individual, if any) under section 1613 for purposes of subparagraph (E) no balance in, or less than or equal to 150 percent of the official poverty line described in subsection (p)(2)(A) and less than or equal to 150 percent of such official poverty line, and (iii) in the matter preceding subparagraph (A), by inserting "and (the eligible spouse of the individual, if any) under section 1613 for purposes of subparagraph (E) no balance in, or less than or equal to 150 percent of such official poverty line, and (iv) by adding "and" at the end of clause (ii);

(2) Conforming Amendment.—Section 1860D–14(a)(3)(C) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)(C)) is amended—

(A) in the heading, by striking "social security" and inserting "applicable resource standard"; and

(B) by striking "inserting ("150") and all that follows through "Maintenance."; and

(2)(II) in the case of determinations made on or after January 1, 2011, the resource requirement described in subparagraph (E) is amended—

(A) by inserting "without taking into account any part of the value of any life insurance policy or any balance in, or benefits received under, an employee pension benefit plan (as defined in section 3 of the Employee Retirement Income Security Act of 1974) after "(as so determined); and

(B) by striking "(D)" and all that follows through "section 1860D–14(a)(3)(E))."

(2) Exemption of In-Kind Support and Maintenance.—

(A) In General.—Section 1905(p)(1)(B) of the Social Security Act (42 U.S.C. 1396d(p)(1)(B)) is amended by striking "except that support and maintenance furnished in kind shall not be counted as income" after "(2)(D)."

(B) Conforming Amendment.—Section 1860D–14(a)(3)(C) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)(C)) is amended—

(A) in the heading, by striking "alternative" and inserting "applicable"; and

(B) in clause (i)—

(1) by striking "and" at the end; and

(2) in paragraph (2)—

(A) in subclause (I), by striking "or (I)"; and

(B) in subclause (II)—

(i) by inserting "(before 2011)" after "a subsequent year";

(ii) by inserting the period at the end of clause (i) and (II) by striking the period at the end of clause (II)

and

(2)(II) in the case of determinations made on or after January 1, 2011, the resource requirement described in subparagraph (E)."

(c) Application of Applicable Resource Standard and Exemptions from Resources.—Section 1905(p)(1)(C) of the Social Security Act (42 U.S.C. 1396d(p)(1)(C)) is amended—

(A) by inserting "inserting "or (IV)" after "subclause (II)";

(B) Effective Date.—The amendments made by this subsection shall apply to determinations made on or after January 1, 2011.

(d) Revision to Description.—Section 1905(p)(1)(E) of the Social Security Act (42 U.S.C. 1396d(p)(1)(E)) is amended—

(A) by inserting "and" at the end of clause (ii); and

(B) by striking "and" at the end of clause (ii).

(e) Revision to Definition.—Section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396b(a)(10)(E)) is amended—

(A) by striking "who would be qualified medicare" and all that follows through "less than"; and

(B) by striking "and" and inserting "who would be qualified medicare" and all that follows through "less than".

(f) Revision to Description.—Section 1905(p)(1)(E) of the Social Security Act (42 U.S.C. 1396b(a)(10)(E)) is amended—

(A) by inserting "and" at the end of clause (ii); and

(B) by striking "and" at the end of clause (ii).

(g) Revision to Definition.—Section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396b(a)(10)(E)) is amended—

(A) by inserting "and" at the end of clause (ii); and

(B) by striking "and" at the end of clause (ii).
the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of paragraph (1), in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 6. EFFECTIVE DATE OF MSP BENEFITS.

(a) In General.—

(1) EFFECTIVE DATE OF MSP BENEFITS.—Section 1860D–14(a)(1)(D)(i) of the Social Security Act (42 U.S.C. 1396d–14(a)(1)(D)(i)) is amended, in the matter preceding paragraph (1), by striking “assistant— or, in the case of medicare-cost-sharing” and all that follows through “beneficiary” and inserting “assistant”.

(2) CONFORMING AMENDMENTS.—(A) Section 1902(e)(3) of the Social Security Act (42 U.S.C. 1396a(e)(3)) is amended by striking the first sentence.

(B) Section 1848(g)(3) of such Act (42 U.S.C. 1395w–2(a)(4)) is amended by adding at the end the following subparagraph:

“(C) RETROACTIVE ELIGIBILITY.—In the case of an individual who is determined to be eligible for medicare assistance described in paragraph (A) of this subsection, the Secretary shall provide a process whereby claims which are submitted for services furnished during the period of retroactive eligibility and during a month in which the individual otherwise would have been eligible for such assistance and which were not submitted in accordance with such subparagraph are resubmitted and reprocessed in accordance with such subparagraph.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2010, but shall not result in eligibility for benefits for medicare cost-sharing for months before January 1, 2010.

SEC. 7. EXPANDING SPECIAL ENROLLMENT PROCESS TO INDIVIDUALS ELIGIBLE FOR AN INCOME-RELATED SUBSIDY.

(a) In General.—Section 1860D–1(b)(1)(C) of the Social Security Act (42 U.S.C. 1396d–1(b)(1)(C)) is amended by—

(1) by striking “a full-benefit dual eligible individual” (as defined in section 1860D–1(a)(3)) and inserting “a subsidy-eligible individual (as defined in section 1860D–1(a)(3));” and

(2) by redesignating paragraph (A) as paragraph (A)(1) and inserting “subsection (A)(1) or (B)(1)(A) of section 1860D–14, as applicable” in paragraph (A).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to enrollments on or after January 1, 2010.

SEC. 8. ENHANCED COST-SHARING PROTECTIONS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS AND QUALIFIED MEDICARE BENEFICIARIES.

(a) ELIMINATION OF PART D COST-SHARING FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS, INSTITUTIONALIZED INDIVIDUALS, AND QUALIFIED MEDICARE BENEFICIARIES.—


(1) in the heading, by striking “INSTITUTIONALIZED INDIVIDUALS.” and inserting “INSTITUTIONALIZED INDIVIDUALS.”; and

(2) by adding at the end the following new subparagraph:

“(II) INSTITUTIONALIZED INDIVIDUALS.—In—

(1) CISTINCTUALIZED INDIVIDUALS.—In; and

(2) by adding at the end the following new subparagraph:

“(II) CERTAIN OTHER INDIVIDUALS.—In the case of an individual who is a full-benefit dual eligible individual who is receiving home and community based care (as defined under section 1915 or under a waiver under section 1115), the elimination of any benefici-

(c) EFFECTIVE DATE.—(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect on the date of enactment of this Act.

(b) REPEAL OF AUTHORITY FOR STATES TO PAY MEDICARE COST-SHARING AT MEDICARE RATES.—Section 1860D–14(a)(4) of the Social Security Act (42 U.S.C. 1396d–14(a)(4)) is amended by—

(1) by striking paragraph (2);

(2) by redesignating paragraph (3) as paragraph (2); and

(3) by striking “cost-sharing” and inserting “benefit assistance”.

(b) EFFECTIVE DATE.—The amendments made by paragraph (2) shall be effective and apply as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (title II).

SEC. 9. TWO-WAY DEEMING BETWEEN MEDICARE SAVINGS PROGRAM AND LOW-INCOME MEDICARE BENEFICIARIES.

(a) low-Income Subsidy Program.—Section 1860D–11(a)(3) of the Social Security Act (42 U.S.C. 1396d–11(a)(3)) is amended—

(1) by striking “(A) a low-income medical assistance program”; and

(2) by inserting “(i) CMS ELIGIBLE FOR FULL SUBSIDY.—A part D eligible individual who has been determined for purposes of title XIX to be a qualified medicare beneficiary is deemed, for purposes of this part and without the need to file any additional application, to be a low-income eligible individual described in paragraphs (1);”.

(b) MEDICARE SAVINGS PROGRAM.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396n(p)), as amended by section 4, is amended—

(1) by redesignating paragraph (6) as paragraph (9); and

(2) by inserting after paragraph (7) the following new paragraph:

“(B) AN individual who has been determined eligible for premium and cost-sharing subsidies under—

“(A) section 1906D–14(a)(1) is deemed, for purposes of this title and without the need to file any additional application, to be a qualified medicare beneficiary for purposes of this title; or

“(B) section 1860D–14(a)(2) is deemed, for purposes of this title and without the need to file any additional application, to be a qualified medicare beneficiary as defined in section 1902(a)(10)(E)(ii).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to eligibility for months beginning on or after January 1, 2010.

SEC. 10. IMPROVING LINKAGES BETWEEN HEALTH PROGRAMS AND SNAP.

(a) low-Income Part D Subsidy Program.—Section 114(c) of the Social Security Act (42 U.S.C. 1320b–1(c)) is amended—

(1) by adding a new paragraph to clause (i) of such section by striking “(a) a low-income medical assistance program”; and

(2) by inserting “the Secretary shall electronically transmit data from such application—

“(i) to the appropriate State Medicaid agency, determined by the Secretary, which transmittal shall initiate an application of the individual for benefits under the
Medicare Savings Program with the State Medicaid agency; and
(ii) to the appropriate State agency which administers benefits under the supplemental nutrition assistance program with the State agency that administers that program.

(B) Consultation regarding content, time, form, frequency and manner of transmission. In order to ensure that such data transmitted provides effective assistance for purposes of State adjudication of applications under the Medicare Savings Program and the supplemental nutrition assistance program, the Commissioner shall consult with the Secretary after the second regular session of Congress to determine the content, form, frequency, and manner in which data (on a uniform basis for all States) shall be transmitted under this paragraph.

(D) Supplemental nutrition assistance program defined. For purposes of this subsection, the term 'supplemental nutrition assistance program' means the program of temporary benefits authorized under section 11(v) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(v)).

(2) Temporary Supplemental Nutrition Assistance Benefits. Section 11 of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(v)) is amended by adding at the end the following new paragraph:

"(3) Provision of temporary benefits. A State agency shall provide temporary supplemental nutrition assistance program benefits to a Medicare part D low income subsidy applicant whose—

(A) Income does not exceed 150 percent of the poverty level determined in accordance with section 5(c)(1); and

(B) Financial resources do not exceed the limit in effect in the State for such household under section 5.

(3) Determination based on Medicare information. For purposes of determining eligibility under paragraph (2) and the amount of temporary benefits under paragraph (5), information on household members, household income, and household resources from the Medicare part D low income subsidy program is transmitted to the State agency under section 114(c)(3) of the Social Security Act (42 U.S.C. 1320b–14(c)(3)) with the requirements for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as having failed to meet such additional requirements solely on the basis of its failure to meet such additional requirements before the first day of the first calendar year that is more than 1 year after the date of enactment of this Act.

(4) Effective date. (A) In general. Except as provided in subparagraph (B), the amendments made by this paragraph shall be in effect on the date of enactment of this Act.

(B) Extension of effective date for state law amendment. In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) that is self-sustaining, the Secretary of Health and Human Services shall have the authority to extend the effective date of such plan to the first day of the first calendar year that is more than 1 year after the date of enactment of this Act.

SEC. 11. EXPEDITING LOW-INCOME SUBSIDIES UNDER THE MEDICARE PRESCRIPTION DRUG PROGRAM.

(a) Targeted Outreach for Low-Income Subsidies. (1) In general. Section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114) is amended by adding at the end the following new subsection:

"(1) Targeted identification of subsidy-eligible individuals.—

(A) In general. The Commissioner of Social Security shall provide for the identification of individuals who are potentially eligible for low-income assistance under this section through requests to the Secretary of the Treasury in accordance with the criteria established under section 6101(i)(21) of the Internal Revenue Code of 1986 for information indicating whether such individual is likely eligible for such assistance.

(B) Initiation of identifications. Not later than 90 days after the date of enactment of this subsection, the Commissioner of Social Security shall begin the identification of individuals through the process described in subparagraph (A) and, by such date and such period, report to the Secretary of the Treasury requests for part D eligible individuals who the Commissioner has identified as potential low-income subsidy recipients under this section before such date of enactment.

(2) Notification of potentially eligible individuals. In the case of each individual identified under paragraph (1) who has not otherwise applied for, or been determined eligible for, benefits under this section (or who is not eligible for, and benefited from, such benefits for such individual's section of this Act), the Secretary of Health and Human Services shall send such notice to the individual to which a letter is transmitted under this paragraph does not affirmatively respond to such letter either by making an enrollment, completing an application, or declining either or both, the Commissioner shall make additional attempts to contact the individual to obtain such an affirmative response.

(B) Follow-up communications. If an individual fails to respond to such letter in accordance with subparagraph (A) and fails to respond affirmatively to such letter either by making an enrollment, completing an application, or declining either or both, the Commissioner shall make additional attempts to contact the individual to obtain such an affirmative response.

(c) Use of preferred language in subsequent communications. In the case an application is submitted by an individual pursuant to this subsection in which a language other than English is specified, the Commissioner shall make such attempts to contact the individual to obtain such an affirmative response.

(C) Follow-up communications. If an individual fails to respond to such letter in accordance with subparagraph (A) and fails to respond affirmatively to such letter either by making an enrollment, completing an application, or declining either or both, the Commissioner shall make additional attempts to contact the individual to obtain such an affirmative response.

(6) Maintenance of effort with respect to outreach. In no case shall the level of outreach of the Commissioner under this section be considered a failure to meet the enrollment of individuals who are potentially eligible for low-income assistance under this Act.
section after the date of the enactment of this subsection be less than such level of ef-
fort before such date of enactment until at least 90 percent of such potentially eligible
individuals have attained that level of assets or resources.

(7) GAO REPORT TO CONGRESS.—Not later 
than 2 years after the date of the first sub-
mersion to the Secretary of the Treasury de-
scribed in paragraph (1)(D), the Comptroller
General of the United States shall submit to 
Congress a report, with respect to the 18-
month period following the establishment of
the process described in paragraph (1)(A),
in—

(A) the extent to which the percentage of
individuals eligible for low-income as-
sistance under this section but not en-
rolled under this part has decreased during
such period;

(B) the Commissioner of Social Secu-
ritv has used any savings resulting from the
implementation of this section and section
6103(i) of the Internal Revenue Code of
1986 to improve outreach to individual de-
scribed in subparagraph (A) to increase en-
rollment of such individuals under this part;

(C) the effectiveness of using information
from the Secretary of the Treasury in ac-
cordance with section 6103(i)(21) of the In-
ternal Revenue Code of 1986 for purposes of indi-
cating whether individuals are eligible for
low-income assistance under this section; and

(D) the effectiveness of the outreach con-
ducted by the Commissioner of Social Secu-
ritv based on the data described in subpara-
graph (C).

(2) CONFORMING AMENDMENT.—Section
1144(c)(1) of the Social Security Act (42
U.S.C. 1320d–14(c)(1)) is amended by inser-
ting "(including through request to the Sec-
tary of the Treasury pursuant to section 1860D-
14(c)(1))" after "receiving a request from".

The effectiveness of using information from
the Secretary of the Treasury under this
paragraph shall be subject to appropriate
methods of implementation.

(b) IMPROVEMENTS TO THE LOW-INCOME SUB-
SIDY APPLICATIONS.—Section 1860D–14(a)(3)
of the Social Security Act (42 U.S.C. 1360w-
14(a)(3)) is amended—

(1) in subparagraph (E), by striking clauses
(i) and (iii) and redesignating clause (iv) as
clause (i);

(2) by redesigning subparagraphs (F) and
(G) as subparagraphs (G) and (H), respect-
ively; and

(3) by inserting after subparagraph (E) the
following new subparagraph:

"(F) SIMPLIFIED LOW-INCOME SUBSIDY AP-
PLICATION AND PROCESS.—

(1) In general.—The Secretary, jointly
with the Commissioner of Social Security,
shall—

(I) develop a model, simplified application
form and procedure consistent with clause (ii)
for the determination and verification of a
part D eligible individual's assets or re-
sources under this paragraph; and

(II) provide such form to States.

(2) PROCEDURES AND RECORDKEEPING
RELATED TO DISCLOSURES.—(Paragraph (4) of
decision 6103(b) of such Code is amended by strik-
ing "or (17)" and inserting "or (18)"

(3) EFFECTIVE DATE.—The amendments
made by this subsection shall apply to disclo-
sures made after the date of the enact-
ment of this Act.

SEC. 12. ENHANCED OVERSIGHT AND ENFORCE-
MENT RELATING TO REIMBURSE-
MENTS FOR RETROACTIVE LIS EN-
ROLLMENTS.

(a) IN GENERAL.—In the case of a retro-
active LIS enrollment beneficiary (as defined in
subsection (e)(4)(A)(i) who is enrolled under a
prescription drug plan under part D of title
XVIII of the Social Security Act (or an MA–
PD plan to under part C of such title),

(1) the beneficiary (or any eligible third
party) is entitled to reimbursement by the
plan for covered drug costs (as defined in
subsection (e)(1)) incurred by the beneficiary
during the retroactive coverage period of
the enrollment beneficiary (as defined in
subsection (b) and in the case of such a beneficiary
described in subsection (e)(4)(A)(i), such re-
bursement shall be made automatically by
the plan unless the plan otherwise notifies the
beneficiary is eligible for assistance de-
scribed in such subsection (e)(4)(A)(i) with-
out further information required to be filed
with the plan by the beneficiary;

(2) the Secretary of Health and Human
Services (in this section referred to as the
"Secretary") shall not make payment to the
plan—

(A) in the case that the beneficiary is de-
scribed in subsection (e)(4)(A)(i), for
pre-
scriptive drugs (as defined in section
1860D–2 of the Social Security Act (42
U.S.C. 1395w–114)) who is enrolled under
section 1860D–14 of the Social Security
Act (42 U.S.C. 1395w–114) with respect to
the provision of prescription drug coverage to
the beneficiary during such retroactive pe-
riod; and

(B) in the case that the beneficiary is de-
scribed in subsection (e)(4)(A)(ii), for direct
subsidies under section 1860D–15(a)(1) of such
Act and premium subsidies and cost-sharing
subsidies under section 1860D–14 of such Act
with respect to the provision of prescription
drug coverage to the beneficiary during such
retroactive period;

unless the plan demonstrates to the Sec-
tary that the plan has provided timely and
accurate reimbursement to the beneficiary
(or eligible third party) in accordance with
paragraph (1);

(3) the Secretary shall not make any pay-
ment described in paragraph (2) to the plan
with respect to such beneficiary for any month of the retroactive enrollment period
which is not expressily participated in
the plan under part D.

(b) ADMINISTRATIVE REQUIREMENTS RELAT-
ING TO REIMBURSEMENTS.—

(1) LIFETIME DESCRIPTION.—Each reim-
bursement made by a prescription drug plan
or MA–PD plan under subsection (a)(1) shall include a line-item description of the items
and services received by the beneficiary
(or eligible third party) in accordance with
paragraph (2) and (3), shall be made at the time the
Centers for Medicare & Medicaid Services
reconciles payments for the entire plan year
following the end of the plan year, and
not before such time.

(2) TIMING OF REIMBURSEMENTS.—A pre-
scription drug plan or MA–PD plan must
make a reimbursement under subsection
(a)(1) for the retroactive LIS enrollment
beneficiary, with respect to a claim, not later
than 30 days after—

(A) in the case of a beneficiary described
in subsection (e)(4)(A)(i), the date on which the
plan receives notice from the Secretary that
the beneficiary is eligible for assistance de-
scribed in such subsection; or

(B) in the case of a beneficiary described
in subsection (e)(4)(A)(ii), the date on which the
beneficiary files the claim with the plan.

(c) NOTICE REQUIREMENTS.

(1) BY SECRETARY OF HHS AND COMIS-
SION OF THE SOCIAL SECURITY ADMINIS-
TRATION.—The Secretary, jointly with the Comis-
nion of the Social Security Administra-
tion, shall ensure that each retroactive LIS
enrollment beneficiary receives, with any
letter or notification of eligibility for a low-
income subsidy under section 1860D–14 of the
Social Security Act, a notice of their right
to reimbursement described in subsection
(a)(1) for covered drug costs incurred during
such retroactive coverage period of the ben-
eficiary. Such notice shall—

(A) with respect to a beneficiary described
in subsection (e)(4)(A)(i), inform the bene-
ficiary of the plan's obligation to make auto-
matic reimbursement as described in sub-
section (a)(1); and

(B) with respect to a beneficiary described
in subsection (e)(4)(A)(ii), include a descrip-
tion of a clear process that the beneficiary
should follow to seek such reimbursement.
(2) BY PRESCRIPTION DRUG PLANS.—
(A) IN GENERAL.—Each prescription drug plan under part D of title XVIII of the Social Security Act (and MA–PD plan under part C of such Act) may offer in a notice from the plan to a retroactive LIS enrollment beneficiary described in subsection (e)(4)(A)(ii) a model notice developed under subsection (e)(4)(B) that shall indicate the period of retroactive coverage for which the beneficiary is eligible and that describes the assistance the individual is entitled to under paragraph (A)(i), the period—

(i) beginning on the date the individual is both entitled to benefits under part A, or enrolled under part B, of title XVIII of the Social Security Act and eligible for medical assistance programs receiving assistance under section 1860D–1 of such Act; and

(ii) ending on the date the plan effectuates the status of such individual as eligible; and

(B) MODEL NOTICE.—The Secretary, jointly with the Commissioner of Social Security, shall develop a model notice for purposes of subparagraph (A) and shall make such model notice available to all prescription drug plans under part D of title XVIII of the Social Security Act (and MA–PD plans under part C of such Act).”

(3) PUBLIC POSTING TO TRACK PAYMENTS.—
(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services (and annually and at such time or times as the Secretary determines) shall post a list of payments made by the Secretary under subsection (a)(2) to prescription drug plans during the most recent 10-year period for which such data are available.

(2) SPECIFIC INFORMATION.—Such information posted—
(A) in 2010 or in a subsequent year before 2016, shall include information on payments made for years beginning with 2006 and ending with the year for which the most current information is available; and
(B) in any other year after 2016, shall include information on payments made for at least the 10 previous years.

(b) EXCEPTION FOR BENEFICIARIES ENROLLED IN RFP PLAN.—
(1) IN GENERAL.—In no case shall an individual described in subparagraph (A)(i) include an individual who is enrolled, pursuant to a RFP contract described in subsection (b)(1), in a prescription drug plan offered by the sponsor of such plan awarded such contract.

(2) RFP CONTRACT DESCRIBED.—The RFP contract described in this section is a contract entered into between the Secretary and a sponsor of a prescription drug plan pursuant to the Centers for Medicare & Medicaid Services’ request for proposals issued on February 17, 2009, relating to Medicare part D retroactive coverage for certain low income beneficiaries, or a similar subsequent request for proposals.

(c) REPORT TO CONGRESS.—In the case that an RFP contract described in subsection (e)(4)(B)(ii) is awarded, not later than two years after the effective date of such contract, the Secretary and the Human Services shall submit to Congress a report evaluating the program carried out through such contract.

(h) EFFECTIVE DATE.—Paragraphs (2) and (3) of subsection (a) and subsections (b) and (c) shall apply to subsidy determinations made on or after the date that is 3 months after the date of the enactment of this Act.

SEC. 13. INTELLIGENT ASSIGNMENT IN ENROLLMENT.
(a) IN GENERAL.—Section 1860D–1(b)(1) of the Social Security Act (42 U.S.C. 1395w–101(b)(1), as amended by section 7(b), is amended—

(1) in the second sentence of subparagraph (C), by striking “on a random basis among all such plans” and inserting “, subject to subparagraph (E), in the most appropriate plan for such individual”;

(2) by adding at the end the following new subparagraph:

(E) INTELLIGENT ASSIGNMENT.—In the case of any auto-enrollment under subparagraph (C), no part D eligible individual described in such subparagraph shall be enrolled in a prescription drug plan without meeting the requirements established by the Secretary.”.

(b) EFFECTIVE DATE.—The amendment made by paragraph (a) shall apply to enrollments effectuated on or after November 15, 2010.

SEC. 14. MEDICARE ENROLLMENT ASSISTANCE.
(a) ADDITIONAL FUNDING FOR STATE HEALTH INSURANCE ASSISTANCE PROGRAMS.

(1) GRANTS.—
(A) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall use amounts made available under subparagraph (B) to make grants to States for State health insurance assistance programs receiving assistance under section 4690 of the Omnibus Budget Reconciliation Act of 1990.

(B) GRANTS.—For purposes of making grants under this subsection, the Secretary shall, in consultation with the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395w–23(f)) of $14,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for fiscal year 2011, to remain available until expended.

(2) AMOUNT OF GRANTS.—The amount of a grant to a State under this section shall be—

(A) GRANTS.—The amount of a grant to a State under this subsection from the total amount made available under paragraph (1) shall be based on the number of individuals who meet the requirements for subparagraph (a)(3)(A)(ii) in each State, as estimated by the Secretary.

(B) ALLOCATION BASED ON PERCENTAGE OF RURAL BENEFICIARIES.—The amount allocated to a State under this subsection from the total amount made available under paragraph (1) shall be based on the number of part D eligible beneficiaries that meet the requirements described in section 1860D–14 for residing in a rural area relative to the total number of such individuals in each State, as estimated by the Secretary.

(iv) PORTION OF GRANT BASED ON PERCENTAGE OF LOW-INCOME BENEFICIARIES.—The portion of a grant awarded under this subsection with respect to amounts allocated under paragraph (3)(A) shall be used to provide outreach to individuals who may be eligible individuals or eligible for the Medicare Savings Program. Each grant awarded under this subsection with respect to amounts allocated under paragraph (3)(A) shall be used to provide outreach to individuals who may be low-income beneficiaries as defined in section 1860D–14a(3)(A) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)(A)) or eligible for the Medicare Savings Program (as defined in section 221(b)(3) of the Social Security Act).
(1) GRANTS.—
(A) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Aging, shall make grants to States for area agencies on aging in the Older Americans Act of 1965 (42 U.S.C. 3002) and Native American programs carried out under the Older Americans Act of 1965 (42 U.S.C. 3001) are
(B) FUNDING.—For purposes of making grants under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t), in the same proportion as the Secretary determines under section 1833(f) of such Act (42 U.S.C. 1395w–23(f)), of $10,000,000 to the Administration on Aging for fiscal year 2011, to remain available until expended.

(2) AMOUNT OF GRANT AND ALLOCATION TO STATES BASED ON PERCENTAGE OF LOW-INCOME AND RURAL BENEFICIARIES.—The amount of a grant to a State under this subsection from the total amount made available under paragraph (1) shall be determined in the same manner as the amount of a grant under subsection (a), from the total amount made available under paragraph (1) of such subsection, is determined under paragraph (2) and subparagraphs (A) and (B) of paragraph (3) of such subsection.

(3) REQUIRED USE OF FUNDS.—
(A) ALL FUNDS.—Subject to subparagraph (B), each grant awarded under this subsection shall be used to provide outreach to eligible Medicare beneficiaries regarding the benefits available under title XVIII of the Social Security Act.
(B) OUTREACH TO INDIVIDUALS WHO MAY BE SUBSIDY ELIGIBLE INDIVIDUALS OR ELIGIBLE FOR THE MEDICARE SAVINGS PROGRAM.—Subject to subparagraph (A), each grant awarded under this subsection shall apply to each State in the same manner as it applies to a grant under subsection (a).

(c) ADDITIONAL FUNDING FOR AGING AND DISABILITY RESOURCE CENTERS.—
(1) GRANTS.—
(A) IN GENERAL.—The Secretary shall make grants to Aging and Disability Resource Centers under the Aging and Disability Resource Center grant program that are established centers under such program on the date of the enactment of this Act.
(B) FUNDING.—For purposes of making grants under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t), and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395w–23(f)), of $10,000,000 to the Administration on Aging for fiscal year 2011, to remain available until expended.

(4) MEDICARE SAVINGS PROGRAM DEFINED.—For purposes of this section, the term ‘‘Medicare Savings Program’’ means the program of medicaid deductions from the cost of medicare cost-sharing under the Medicaid program pursuant to sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E) and 1933(b) of such Act).

(5) QBM BUY-IN OF PART A AND PART B PREMIUMS.—
(a) REQUIREMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a), as amended by section 10, is amended—
(1) in paragraph (73), by striking ‘‘and’’ at the end;
(2) in paragraph (74), by striking the period at the end and inserting ‘‘; and’’;
and
(3) by inserting after paragraph (74) the following new paragraph:
‘‘(75) provide that the State enters into a modification of an agreement under section 1818(a).’’

(b) EFFECTIVE DATE.—
(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section take effect on the date that is 6 months after the date of enactment of this Act.
(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XV of the Social Security Act (42 U.S.C. 1396 et seq.), which the Secretary of Health and Human Services determines requires State legislation in order for the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

(c) REQUIREMENT FOR THE SECRETARY.—Section 1905(p)(5) of the Social Security Act (42 U.S.C. 1396d(p)(5)) is amended by adding at the end the following new sentence: ‘‘Such form shall allow an individual to specify a preferred language for subsequent communication.’’.

15. QBM BUY-IN OF PART A AND PART B PREMIUMS.

SEC. 16. INCREASING AVAILABILITY OF MSP APPLICANTS THROUGH AVAILABILITY ON THE INTERNET AND DESIGNATION OF PREFERRED LANGUAGE.

(a) REQUIREMENT FOR STATES.—
(1) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a), as amended by section 15, is amended—
(A) in paragraph (74), by striking ‘‘and’’ at the end;
(B) in paragraph (75), by striking the period at the end and inserting ‘‘; and’’;
and
(C) by inserting after paragraph (75) the following new paragraph:
‘‘(76) provide—
‘‘(A) that the application for medical assistance on the most effective outreach, screening, and follow-up strategies for the Federal and State programs,
‘‘(B) that the State makes such application available through an Internet website and provides for such application to be completed on such website.’’.
(2) EFFECTIVE DATE.—
(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection take effect on the date that is 6 years after the date of enactment of this Act.
(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XV of the Social Security Act (42 U.S.C. 1396 et seq.), which the Secretary of Health and Human Services determines requires State legislation in order for the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

(#399x499) INSERTION.—Section 1905(p)(5) of the Social Security Act (42 U.S.C. 1396d(p)(5)) is amended by adding at the end the following new sentence: ‘‘Such form shall allow an individual to specify a preferred language for subsequent communication.’’.

17. STATE MEDICAID APPLICATION—LOW-INCOME SUBSIDY APPLICATION AND DATA TRANSMITTAL.

(a) TECHNICAL AMENDMENTS.—
(1) IN GENERAL.—Section 114(c)(3)(A)(i) of the Social Security Act (42 U.S.C. 1320b–14(c)(3)(A)(i)), as amended by section 10, is amended—
(A) by striking ‘‘transmittal’’; and
and
(B) by inserting ‘‘(as specified in section 1905(a)(4))’’ before the semicolon at the end.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the enactment of section 113(a) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275).

(b) CLARIFICATION OF STATE MEDICAID AGENCY RESPONSIBILITY FOR LOW-INCOME SUBSIDY APPLICATION.—Section 1905(a)(4) of the Social Security Act (42 U.S.C. 1396a(a)(4)), as added by section 113(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), is amended—
S. 1186. A bill to amend title XVIII of the Social Security Act to eliminate the in the home restriction for Medicare coverage of mobility devices for individuals with expected long-term needs.

Mr. BINGAMAN. Mr. President, I rise today along with Senators COLLINS, LIEBERMAN, and HARKIN to introduce the Medicare Independent Living Act of 2009. This legislation would eliminate the in the home restriction for the coverage of mobility devices, including wheelchairs and scooters, for those with disabilities and expected long-term needs. This includes people with multiple sclerosis, paraplegia, osteoarthritis, and cerebrovascular disease including acute stroke and conditions like aneurysms.

As currently interpreted by the Centers for Medicare and Medicaid Services, CMS, the ‘in the home’ restriction covers beneficiaries requiring a certain wheelchair that are necessary for use inside the home. As a result, severely disabled beneficiaries who would primarily utilize a wheelchair outside the home are prevented from receiving this critical and basic equipment through Medicare. For example, this restriction prevents beneficiaries from receiving wheelchairs to access their work, the community-at-large, place of worship, school, physician’s offices, or pharmacies.

As the Medicare Rights Center in a report entitled “Forced Isolation: Medicare’s ‘In The Home’ Coverage Standards for Wheelchairs” in March 2004 notes, “This effectively disqualified you from leaving your home without the assistance of others.”

Furthermore, in a Kansas City Star article dated July 3, 2005, Mike Oxford with the National Council on Independent Living noted, “You look at mobility assistance as a way to liberate yourself.” He added that the restriction ‘is just backward.”

Indeed, policies such as these are not only backward but directly contradict numerous initiatives aimed at increasing community integration of people with disabilities, including the Americans with Disabilities Act, the Ticket-to-Work Program, the New Freedom Initiative, and the Olmstead Supreme Court decision.

According to the Medicare Rights Center update dated March 23, 2006, “This results in arbitrary denials. People with apartments too small for a power wheelchair are denied a device that could get them down the street. Those in more spacious quarters get coverage, allowing them to scoot from room to room and to the grocery store. People who summon all their willpower and strength to hobble around a small apartment get no help for tasks that are beyond them and their front door.”

In New Mexico, I have heard this complaint about the law repeatedly from our State’s most vulnerable disabled and senior citizens. People argue the provision is being misinterpreted by the administration and results in Medicare beneficiaries being trapped in their home.

The Independence Through Enhancement of Medicare and Medicaid, ITEM, Coalition adds in a letter to CMS on this issue in November 25, 2005, “There continues to be no clinical basis for the ‘in the home’ restriction and by asking treating practitioners to document medical need only within the home setting, CMS is severely restricting patients from receiving the most appropriate devices to meet their mobility needs.”

My legislation would clarify that this restriction does not apply to mobility devices, including wheelchairs, for people with disabilities in the Medicare Program. The language change is fairly simple and simply clarifies that the ‘in the home’ restriction for the coverage of mobility devices does not apply in the case of mobility devices needed by Medicare beneficiaries with expected long-term needs for use “in customary settings such as normal domestic, vocational, and community activities.”

This legislation is certainly not intended to discourage CMS from dedicating its resources to reducing waste, fraud, and abuse in the Medicare system, as those efforts are critical to ensuring that Medicare remains financially viable and strong in the future. However, it should be noted that neither Medicaid nor the Department of Veterans Affairs impose such “in the home” restrictions on mobility devices.

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

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

SEC. 2. ELIMINATION OF IN THE HOME RESTRICTION FOR MEDICARE COVERAGE OF MOBILITY DEVICES FOR INDIVIDUALS WITH EXPECTED LONG-TERM NEEDS.

(a) In general.—Section 1860D–14 to be the date of the filing of an application for benefits under the Medicare Savings Program.

(b) Effective date.—The amendment made by subsection (a) shall apply to items furnished on or after the date of enactment of this Act.

By Mr. REED (for himself, Ms. MURKOWSKI, and Mr. WHITEHOUSE):

S. 1188. A bill to amend the Public Health Service Act with respect to mental health services; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, today I introduce, along with Senators MURKOWSKI and WHITEHOUSE, the Community Mental Health Services Improvement Act. For decades, we have known that people suffering from mental illness die sooner—often 25 years sooner—and have higher rates of disability than the general population. People with mental illness are at greater risk of preventable health conditions such as heart disease and diabetes. With this legislation, we are taking steps to address these disturbing trends.

We know that mental health and physical health are inter-related. Yet historically mental health and physical health have been treated separately. This legislation would integrate care in one setting.

In a recent survey, 91 percent of community mental health centers said that improving the quality of health care is a priority. However, only one-third have the capacity to provide health care on site, and only one-fifth provide medical referrals off site. The centers identified a lack of financial resources as the biggest barrier to integrating treatment.

Accordingly, this legislation provides grants to integrate treatment for mental health, substance abuse, and primary and specialty care. Grantees can use the funds for screenings, basic health care services on site, referrals, or information technology.

This legislation also comprehensively responds to the well identified mental health workforce crisis by providing grants for a wide range of innovative recruitment and retention efforts, including loan forgiveness and repayment programs, to placement and support for new mental health professionals, and expanded mental health education and training programs.

Finally, this legislation provides grants for tele-mental health in medically underserved areas, and information technology for tele-mental health.

These proposals address the twin goals of improving the quality of mental health care and reducing the的历史 параллели с министерством и государством, а также с различными аспектами управления и политики. Это включает в себя развитие и улучшение услуг в области психического здоровья, а также поддержку и интеграцию этих услуг в более широкий контекст здравоохранения и социального обеспечения.
health treatment while expanding access to that treatment in rural and underserved areas.

This bipartisan legislation has the overwhelming support of the mental health community. It has been endorsed by the National Council for Community Behavioral Healthcare, the National Alliance on Mental Illness, Mental Health America, the Campaign for Mental Health Reform, and the American Psychological Association. I am especially grateful for the support of the Rhode Island Council of Community Mental Health Organizations, whose members treat close to 15,000 Rhode Islanders of all ages.

As a member of the Senate Committee on Health, Education, Labor, and Pensions, I look forward to our upcoming work on reforming our nation’s health care system—and including important improvements to prevent and treat mental and physical illnesses and conditions. It is my hope that this year we can turn our attention to address the challenge of comprehensively improving and expanding access to mental health services.

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

S. 1188

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 “Community Mental Health Services Improvement Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) almost 60,000,000 Americans, or one in four adults and one in five children, have a mental illness that can be diagnosed and treated in a given year;

(2) mental illness costs our economy more than $80,000,000,000 annually, accounting for 15 percent of the total economic burden of disease;

(3) alcohol and drug abuse contributes to the death of more than 100,000 people and costs society upwards of half a trillion dollars a year;

(4) individuals with serious mental illness die on average 25 years sooner than individuals in the general population; and

(5) community mental and behavioral health organizations provide cost-efficient and evidence-based treatment and care for millions of Americans with mental illness and addiction disorders.

SEC. 3. CO-LOCATING PRIMARY AND SPECIALTY CARE IN COMMUNITY-BASED MENTAL HEALTH SETTINGS.

Subpart 3 of part B of title V of the Public Health Service Act (42 U.S.C. 290b-81 et seq.) is amended by adding at the end the following:

“SEC. 520K. GRANTS FOR CO-LOCATING PRIMARY AND SPECIALTY CARE IN COMMUNITY-BASED MENTAL HEALTH SETTIN G S.

“(a) Definitions.—In this section:

“(1) Eligible entity.—The term ‘eligible entity’ means a qualified community mental health program defined under section 1913(b)(1).

“(2) Special populations.—The term ‘special populations’ refers to the following 3 groups:

“(A) Children and adolescents with mental and emotional disturbances who have co-occurring primary care conditions and chronic diseases.

“(B) Adults with mental illnesses who have co-occurring primary care conditions and chronic diseases.

“(C) Older adults with mental illnesses who have co-occurring primary care conditions and chronic diseases.

“(b) Program Authorized.—The Secretary, through the Administrator of the Substance Abuse and Mental Health Services Administration and in coordination with the Director of the Health Resources and Services Administration, shall award grants to eligible entities to establish demonstration projects for the provision of co-ordinated and integrated services to special populations through the co-location of primary and specialty care services in community-based mental and behavioral health settings.

“(c) Application.—To be eligible to receive a grant under this section, an eligible entity shall submit an application to the Administrator at such time, in such manner, and on such form as the Administrator may require. Each such application shall include:

“(1) an assessment of the primary care needs of the patients served by the eligible entity and a description of how the eligible entity will address such needs; and

“(2) a description of partnerships, cooperative arrangements or agreements with other local primary care providers, including community health centers, to provide services to special populations.

“(d) Use of Funds.—

“(1) in general.—For the benefit of special populations, an eligible entity shall use funds awarded under this section for the provision, by the eligible entity, or by other qualified care providers, of—

“(A) the provision, by qualified primary care professionals on a reasonable cost basis, of—

“(i) primary care services on site at the eligible entity;

“(ii) diagnostic and laboratory services; or

“(iii) adult and pediatric eye, ear, and dental screenings;

“(B) reasonable costs associated with medically necessary referrals to qualified specialty care professionals as well as to other qualified care providers as determined by the terms of the grant, for the provision, by qualified specialty care professionals on a reasonable cost basis on site at the eligible entity;

“(C) information technology required to accommodate the clinical needs of primary and specialty care professionals; or

“(D) facility improvements or modifications needed to bring primary and specialty care professionals on site at the eligible entity.

“(2) Limitation.—Not to exceed 15 percent of grant funds may be used for activities described in subparagraphs (C) and (D) of paragraph (1).

“(e) Geographic Distribution.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

“(f) Evaluation.—Not later than 3 months after a grant or cooperative agreement awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant or agreement.

“(g) Report.—Not later than 5 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report that shall evaluate the activities funded under this section. The report shall include an evaluation of the impact of co-locating primary and specialty care in community health settings on overall patient health status and recommendations on whether or not the demonstration program under this section shall be made permanent, including such amounts as may be necessary for each of fiscal years 2011 through 2014.”.

SEC. 4. INTEGRATING TREATMENT FOR MENTAL HEALTH AND SUBSTANCE ABUSE CO-OC currING DISORDERS.

Section 5301 of the Public Health Service Act (42 U.S.C. 290b–40) is amended—

(1) by striking subsection (i) and inserting the following:

“(j) Funding.—There shall be an amount from amounts appropriated under sections 509 and 520A.);

(2) by inserting before subsection (j), the following:

“(k) Community Mental Health Program.—For purposes of eligibility under this section, the term ‘private nonprofit organization’ includes a qualified community mental health service program as defined under section 1913(b)(1).’.’.

SEC. 5. IMPROVING THE MENTAL HEALTH WORKFORCE.

“(a) National Health Service Corps.—Paragraph (1) of section 332(a) of the Public Health Service Act (42 U.S.C. 256a(a)) is amended—

“(1) in general.—For the benefit of special populations, an eligible entity shall use funds awarded under this section in part to hire qualified mental health professionals meeting the criteria specified in section 1913(c)” for the purpose of expanding access to mental health care for special populations through innovative programs to address the behavioral and mental health workforce needs of designated mental health professional shortage areas.

“(b) Use of Funds.—An eligible entity shall use grant funds awarded under this section for—

“(1) loan forgiveness and repayment programs (to be carried out in a manner similar to the loan repayment programs carried out under subpart III of part D) for community mental and behavioral health professionals who—

“(A) agree to practice in designated mental health professional shortage areas;

“(B) are graduates of programs in behavioral or mental health;

“(C) agree to serve in community-based non-profit entities, or as public mental health professionals for the Federal, State or local government; and

“(D) agree to—

“(i) provide services to patients regardless of such patients’ ability to pay; and

“(ii) use a sliding payment scale for patients who are unable to pay the total cost of services;

(2) behavioral and mental health professional recruitment and retention efforts, with a particular emphasis on candidates...
from racial and ethnic minority and medically-underserved communities;

‘‘(3) grants or low-interest or no-interest loans for behavioral and mental health professionals who participate in the Medicaid program under title XIX of the Social Security Act to establish or expand practices in designated mental health professional shortage areas, or to serve in qualified community mental health programs as defined in section 1913(b)(1);

‘‘(4) placement and support for behavioral and mental health professionals, resident physicians, trainees, and fellows or interns;

‘‘(5) continuing behavioral and mental health education, including distance-based education;

‘‘(c) APPLICATION.—

‘‘(1) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

‘‘(2) ASSURANCES.—The application shall include assurances that the applicant will meet the requirements of this subsection and that the applicant possesses sufficient infrastructure to manage the activities to be funded through the grant and to evaluate and report on the outcomes resulting from such activities.

‘‘(d) MATCHING REQUIREMENT.—The Secretary may not make a grant to an eligible entity under this section unless that entity agrees that, with respect to the costs to be incurred by the entity in carrying out the activities for which the grant was awarded, the entity will contribute non-Federal contributions in an amount equal to not less than 35 percent of Federal funds provided under the grant. The entity may provide the contributions on a matched basis, as determined by the Secretary, including plant, equipment, and services, and may provide the contributions from State, local, or private sources.

‘‘(e) SUPPLEMENT NOT SUPPLANT.—A grant awarded under this section shall be expended to supplement, and not supplant, the expenditures of the eligible entity and the value of the services provided by the eligible entity concerning the effectiveness of the activities carried out under the grant.

‘‘(f) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

‘‘(g) EVALUATION.—Not later than 3 months after a grant awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by or for the entity concerning the effectiveness of the activities carried out under the grant.

‘‘(h) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary, in consultation with the appropriations committees of Congress, shall submit a report containing data relating to whether grants provided under this section have increased access to behavioral and mental health services in designated mental health professional shortage areas.

‘‘(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.’’

SEC. 506C. GRANTS FOR BEHAVIORAL AND MENTAL HEALTH EDUCATION AND TRAINING PROGRAMS.

‘‘(a) DEFINITIONS.—For the purposes of this section, the term ‘related mental health personnel’ means an individual who—

‘‘(1) facilitates access to a medical, social, educational, or other appropriate provider of mental health services; and

‘‘(2) is not a mental health professional, but who is the first point of contact with persons who are seeking mental health services.

‘‘(b) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall establish a program to increase the number of trained behavioral and mental health professionals and related mental health personnel, and shall regularly grant funds on a competitive basis to mental and behavioral health nonprofit organizations or accredited institutions of higher education to enable such entities to establish or expand accredited mental and behavioral health education programs.

‘‘(c) APPLICATION.—

‘‘(1) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

‘‘(2) ASSURANCES.—The application shall include assurances that the applicant will meet the requirements of this subsection and that the applicant possesses sufficient infrastructure to manage the activities to be funded through the grant and to evaluate and report on the outcomes resulting from such activities.

‘‘(d) MATCHING REQUIREMENT.—The Secretary shall ensure that grants awarded under this section, in awarding grants under this section, the Secretary shall give priority to applicants that—

‘‘(1) demonstrate a familiarity with the use of evidenced-based methods in behavioral and mental health services;

‘‘(2) provide interdisciplinary training experiences; and

‘‘(3) demonstrate a commitment to training methods and practices that emphasize the integrated treatment of mental health and substance abuse disorders.

‘‘(e) USE OF FUNDS.—Funds awarded under this section shall be used to—

‘‘(1) establish or expand accredited behavioral and mental health education programs, including improving the coursework, related field placements, or faculty of such programs; or

‘‘(2) establish or expand accredited mental and behavioral health training programs for related mental health personnel.

‘‘(f) REQUIREMENTS.—The Secretary may award a grant to an eligible entity only if such entity agrees that—

‘‘(1) any behavioral or mental health program assisted under the grant will prioritize cultural competency and the recruitment of trainees from minority and medically-underserved communities; and

‘‘(2) with respect to any violation of the agreement under this subsection, a grantee and the entity, the entity will pay such liquidated damages as prescribed by the Secretary.

‘‘(g) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

‘‘(h) EVALUATION.—Not later than 3 months after a grant awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant.

‘‘(i) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether grants provided under this section have increased access to behavioral and mental health services in designated mental health professional shortage areas.

‘‘(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.’’

SEC. 5. IMPROVING ACCESS TO MENTAL HEALTH SERVICES IN MEDICALLY-UNDERSERVED AREAS.

Subpart 3 of part B of title V of the Public Health Service Act (42 U.S.C. 290h–3 et seq.) is amended by inserting after section 530A the following:

‘‘SEC. 520B. GRANTS FOR TELE-MENTAL HEALTH IN MEDICALLY-UNDERSERVED AREAS.

‘‘(a) PROGRAM AUTHORIZED.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall award grants to eligible entities to provide tele-mental health in medically-underserved areas.

‘‘(b) ELIGIBLE ENTITY.—To be eligible for an award under this section, an entity shall—

‘‘(1) facilitate access to a medical, social, educational, or other appropriate provider of mental health services; and

‘‘(2) establish or expand accredited mental and behavioral health education programs.

‘‘(c) USE OF FUNDS.—Funds awarded under this section shall be used to—

‘‘(1) establish or expand accredited mental and behavioral health education programs, including improving the coursework, related field placements, or faculty of such programs; or

‘‘(2) provide interdisciplinary training experiences; and

‘‘(3) demonstrate a commitment to training methods and practices that emphasize the integrated treatment of mental health and substance abuse disorders.

‘‘(d) MATCHING REQUIREMENT.—The Secretary shall ensure that grants awarded under this section, in awarding grants under this section, the Secretary shall give priority to applicants that—

‘‘(1) demonstrate a familiarity with the use of evidenced-based methods in behavioral and mental health services;

‘‘(2) provide interdisciplinary training experiences; and

‘‘(3) demonstrate a commitment to training methods and practices that emphasize the integrated treatment of mental health and substance abuse disorders.

‘‘(e) USE OF FUNDS.—Funds awarded under this section shall be used to—

‘‘(1) establish or expand accredited behavioral and mental health education programs, including improving the coursework, related field placements, or faculty of such programs; or

‘‘(2) establish or expand accredited mental and behavioral health training programs for related mental health personnel.

‘‘(f) REQUIREMENTS.—The Secretary may award a grant to an eligible entity only if such entity agrees that—

‘‘(1) any behavioral or mental health program assisted under the grant will prioritize cultural competency and the recruitment of trainees from minority and medically-underserved communities; and

‘‘(2) with respect to any violation of the agreement under this subsection, a grantee and the entity, the entity will pay such liquidated damages as prescribed by the Secretary.

‘‘(g) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

‘‘(h) EVALUATION.—Not later than 3 months after a grant awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant.

‘‘(i) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether grants provided under this section have increased access to behavioral and mental health services in designated mental health professional shortage areas.

‘‘(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.’’

SEC. 7. IMPROVING HEALTH INFORMATION TECHNOLOGY FOR MENTAL HEALTH PROVIDERS.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended by section 3, is amended by adding after section 520A the following:
"SEC. 506D. IMPROVING HEALTH INFORMATION TECHNOLOGY FOR MENTAL HEALTH PROVIDERS.

(a) In General—The Secretary, in consultation with the Secretary of Veterans Affairs, shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration and the National Coordinator for Health Information Technology to—

(1) develop and implement a plan for ensuring that various components of the National Health Information Infrastructure, including data and privacy standards, electronic health records, and community and regional health information networks, address the needs of mental health and substance abuse treatment providers; and

(2) finance related infrastructure improvements, technical support, personnel training, and ongoing quality improvements.

(b) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to the Committee on Finance—

$10,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.

By Mr. WYDEN (for himself, Ms. SNOWE, Mrs. MURRAY, Mr. MENENDEZ, Mr. MCCAIN, Mrs. GILLIBRAND, and Mr. ENSCIC):

S. 1192. A bill to restrict any State or local jurisdiction from imposing a new discriminatory tax on mobile wireless communications services, providers, or property; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to join my colleague Senator WYDEN in reintroducing legislation that will stop the increasing financial burden being placed on wireless consumers by discriminatory taxes. On average, the typical consumer pays 15.2 percent of his/her total wireless bill in Federal, State, and local taxes, fees and surcharges—this is compared to the 7.07 percent average tax rate for other goods and services.

The Mobile Wireless Tax Fairness Act of 2009 would ensure that these tax rates don’t increase further by prohibiting States and local governments from imposing a new discriminatory tax on mobile wireless communications services, providers, or property for a period of 5 years. The bill defines “new discriminatory tax” as a tax imposed on mobile services, providers, or property that is not generally imposed on other types of services or property, or that is generally imposed at a lower rate.

The wireless era has changed the way the world communicates. To date, there are more than 270 million wireless subscribers in the United States, and consumers used more than 2.2 trillion minutes of airtime from July 2007 to June 2008—that is more than 6 billion minutes per day! And with this growth, more people are using the cell phone as a primary communication device as well as for data and Internet services—approximately 20 percent of households have “cut the cord” and use cell phones exclusively. The increased mobility and access of wireless communications provide have improved our lives, our safety, and the efficiency of our work and businesses. It is estimated that the productivity value of all mobile wireless services was worth $185 billion in 2005 alone.

However, as more consumers and businesses embrace wireless technologies and applications, more States and local governments are embracing it as a revenue source by applying these excessive and discriminatory taxes, which show up on consumers’ bills each month. In fact, the effective rate of taxation on wireless services has increased four times faster than any other taxable goods and services between January 2003 and January 2007.

These excessive and discriminatory taxes discourage wireless adoption and use, primarily with low-income individuals and families that still view a cellular phone as a luxury when many Americans consider it a necessity. By banning these taxes, we can equalize the taxation of the wireless industry with that of other goods and services and protect the wireless consumer from the weight of exorbitant fees, surcharges, and general business taxes. We cannot allow this essential and innovative industry as well as the consumers who benefit from its amazing services and applications to suffer excessive tax rates.

Placing a moratorium on new discriminatory wireless taxes will ensure that consumers continue to reap the benefits of wireless services. Congress took similar action with the Internet Tax Freedom Act Amendments Act of 2007 last session—because of the incredible impact the Internet will continue to have on consumers and businesses alike. The future of wireless is just as bright and that is why we must ensure its continued growth.

It is confounding that telecommunication, one of the most essential components of our economy and our daily lives, is one of the most highly taxed sectors. I sincerely hope that my colleagues join Senator WYDEN and me in supporting this critical bipartisan legislation so we can continue our efforts to curtail discriminatory taxes on these vital services so that all Americans can leverage the benefits they offer. I would like to thank Senator MCCAIN for his past leadership on this issue and for cosponsoring this consumer-friendly legislation.

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

S. 1193. A bill to amend title 49, United States Code, to enhance aviation safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today to join my colleague, Senator KLOBUCHAR, to introduce legislation that I believe continues to be crucial in the effort to improve aviation safety. Before I begin, I want to recognize the deliberate and unfailing efforts of Senator KLOBUCHAR, whose commitment to improve the safety of commercial aviation in this country is so admirable.

We all remember last spring’s news: a U.S. carrier continued flying aircraft even though critical safety checks involving cracks in their fuselages had not been performed on approximately 50 jets. In fact, an independent review concluded that these flights potentially endangered over six million passengers. What was the punitive or disciplinary action taken against the inspector who condoned this behavior—those aircraft to continue flying? Nothing. The PMI, or supervising inspector, continued in his role. Also, as many of you will recall, last April, American Airlines cancelled nearly 2,000 flights in order to catch up on inspections of aircraft wiring—inspections that should have been performed previously under its agreement with the FAA.

This startling news was compounded by a Department of Transportation Inspector General’s report in June disclosing so-called safety inspectors are turning a blind eye to violations. Now, according to a New York Times article dated June 4, an inspector reported to his superiors that Colgan Air had been having trouble with the most recent purchase, the Bombardier Q400. The same aircraft that crashed outside of Buffalo, New York this past March. What did his superiors do with this information? They transferred the inspector to a different job, and reportedly buried the report.

The FAA’s overarching role is to serve as a protector of the public trust; not as a public relations and management tool for the commercial airlines. What I find most offensive throughout these reports is the willingness by the FAA to ignore safety concerns or inspection violations, to presume that due to the tremendous level of success regarding safety protections for so long they no longer need to follow the procedures that created that high level of safety, instead, as the Inspector General’s report indicated, they want to “avoid a negative effect on the FAA” by enforcing those measures.

That is why Senator KLOBUCHAR and I are committed to closing the revolving door between the airlines and the FAA. We need to codify our safety expectations into law and hold anyone up to a different standard of the safety process accountable. By establishing a cooling-off period so that FAA inspectors cannot immediately go to work for an airline they used to inspect, and demanding that the FAA specify a different inspector to conduct periodic, unannounced audits of FAA air carrier inspection facilities will guarantee that aircraft inspections are carried out in a rigorous and timely fashion. The American people, not the airlines, are the primary customer of the FAA. It is my hope that these provisions will assist in returning the FAA to their core mission: safety.
Ms. CANTWELL (for herself, Ms. SNOWE, Mr. ROCKEFELLER, and Mrs. HUTCHISON):

S. 1194. A bill to reauthorize the Coast Guard for fiscal years 2010 and 2011, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. CANTWELL. Mr. President, for countless communities around the country, our oceans are the heartbeat of their histories and economies. In fact, according to the Joint Oceans Commission, healthy oceans and coasts are an important means of transportation, trade, and national security. Ocean-dependent industries generate about $138 billion and support millions of jobs in the United States’ economy.

According to the National Ocean Economic Project, 30 U.S. coastal States accounted for 82 percent of total population and 81 percent of all U.S. jobs in 2006. In my home State of Washington, Seattle’s facilities and activities alone support 190,000 jobs, and the State has 3,000 fishing vessels that employ 10,000 fishermen.

There is no group that is more important to the health and safety of our ports, our economy, and our communities than the U.S. Coast Guard. The brave men and women of the U.S. Coast Guard are charged with many missions—from serving as our environmental stewards, performing search and rescue missions, and protecting us from terrorism, to helping clean up oil spills and enforcing fisheries laws. They are largely responsible for keeping these coastal economic engines running, and have proved time and time again that they are, as their motto says, “Always ready.”

But for the Coast Guard to do its job Congress needs to support those who serve in its ranks. We have a responsibility to ensure the Coast Guard has the tools and the ability to carry out the missions of today, while looking ahead to the challenges of tomorrow.

The bill I am introducing today, The Coast Guard Authorization Act for fiscal years 2010 and 2011, is designed to help the Coast Guard move toward the future, and ensure our maritime industries remain the clean and safe economic engine our nation’s coastal communities have depended on for generations.

As the U.S. experiences major oil spills, tropical storms, hurricanes, and terrorism, our maritime economy faces ever-present threats. Congress needs to uphold its end of the bargain and provide the legislative backing the Coast Guard needs to do its job, and do its job well.

This bill gives the Coast Guard greater authority to work with international maritime authorities, get better access to global safety and security information, and work more cooperatively with other nations on law enforcement; allows the Coast Guard to rework its command structure and increase its alignment with other Armed forces; better supports the men and women who serve in the U.S. Coast Guard by allowing greater reimbursement for medical-related expenses and allowing Coast Guard service-members to participate in the Armed Forces Retirement Home system; and directs the Coast Guard to conduct a thorough cost-benefit analysis for recapitalizing its polar icebreaker fleet so the service can prepare for future mission demands in the Arctic.

This bill also contains the most ambitious reform of its acquisitions program in the Coast Guard’s history. The Coast Guard is struggling right now to replace their rapidly aging fleet of ships, aircraft, and facilities. At a cost of $21 billion, the Deepwater Program is the Coast Guard’s largest and most complex acquisition program ever. Congress has a responsibility to ensure there is transparency and oversight so this program is as efficient and effective as possible.

Unfortunately, the Coast Guard’s Deepwater program has experienced major failures and setbacks. The program utilized a private sector lead systems integrator, LSI, as Integrated Coast Guard Systems, ICGS, to oversee acquisition of a “system of systems.” When the Deepwater contract was originally awarded in 2002, the Coast Guard did not have the personnel in their ranks to manage such a large contract. Congress was told that outsourcing that role to industry would save the Coast Guard time and money over the long run.

That approach, which may have seemed innovative at the time, has not produced the promised results. Instead of cost and time savings, we have seen cost overruns, schedule delays, less competition and inadequate technical oversight.

The Department of Homeland Security Inspector General, IG, released three reports in 2006 and early 2007 detailing some of the problems with Deepwater, including problems with electronics equipment, crucial design flaws and cost overruns created by a faulty contract structure and lack of oversight, and serious issues with the 123-foot cutter conversion project.

This legislation wapes the slate clean and makes fundamental changes to the Coast Guard’s acquisition program. It requires the Coast Guard to abandon the industry-led Lead Systems Integrator and get back to basics—full and open competition for all future assets. It requires a completely new ‘analysis of alternatives’ for all future Deepwater acquisitions to ensure that the Coast Guard is getting the assets best-suited for their needs.

It requires the Coast Guard to follow a rigorous acquisitions process to make sure taxpayer dollars are spent wisely. And, it gives the Coast Guard the tools it needs to manage acquisitions effectively, including requiring the Coast Guard to make internal management changes to ensure open competition, increase technical oversight and improve reporting to Congress.

This legislation takes major steps towards getting the Coast Guard the assets they need while ensuring responsible management of taxpayer dollars. I look forward to working with my colleagues to enact the changes I am proposing today. We can get this program back on track and help the Coast Guard accomplish its missions.

If we fail to pass legislation, we are doing a major disservice to those very people we depend on. We will do so as they continue to place their lives at risk while they perform the mission of the Coast Guard.

This bill is good for taxpayers, good for the Coast Guard, and good for every American depending on them to be, “Always ready.”

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

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

...
SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.
(a) ACTIVE DUTY STRENGTH.—The Coast Guard is authorized, for the fiscal year of 2011, a total end-strength of active duty personnel of 45,254 as of September 30, 2010, and 52,452 as of September 30, 2011.
(b) MILITARY TRAINING STUDENT LOADS.—The Coast Guard is authorized average military training student loads as follows:
(1) For recruit and special training, 2,500 student years for fiscal year 2010, and 2,625 student years for fiscal year 2011.
(2) For flight training, 170 student years for fiscal year 2010 and 179 student years for fiscal year 2011.
(3) For professional training in military and civilian institutions, 350 student years for fiscal year 2010 and 368 student years for fiscal year 2011.
(4) For officer acquisition, 1,300 student years for fiscal year 2010 and 1,365 student years for fiscal year 2011.

TITLE II.—ADMINISTRATION
SEC. 201. AUTHORITY TO DISTRIBUTE FUNDS THROUGH GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS TO MARITIME AUTHORITIES AND ORGANIZATIONS.
Section 149 of title 14, United States Code, is amended by adding at the end the following:
“(c) GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.—The Commandant may, after consultation with the Secretary of State, make grants to, or enter into cooperative agreements, contracts, or other agreements with, international organizations for the purpose of acquiring information or data about merchant vessel inspections, security, safety and environmental requirements, classification, and port state or flag state law enforcement or oversight.”.

SEC. 202. ASSISTANCE TO FOREIGN GOVERNMENTS, MERCHANTS, AND MARITIME AUTHORITIES.
Section 149 of title 14, United States Code, as amended by section 201, is further amended by adding at the end the following:
“(d) AUTHORIZED ACTIVITIES.—
(1) The Commandant may transfer or expend funds from any appropriation available to the Coast Guard for—
(A) the activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities;
(B) the activities of maritime authority liaison teams, including reciprocal visits to Coast Guard units, including any transportation expense, translation services expense, or administrative expense that is related to such activities;
(C) seminars and conferences involving members of maritime authorities of foreign governments;
(D) distribution of publications pertinent to engagement with maritime authorities of foreign governments; and
(E) personnel expenses for Coast Guard civilian and military personnel to the extent that those expenses relate to participation in an activity described in subparagraph (C) or (D).
(2) An activity may not be conducted under this subsection with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.”.

SEC. 203. COOPERATIVE AGREEMENTS FOR INDUSTRIAL ACTIVITIES.
Section 151 of title 14, United States Code, is amended—
(1) by inserting “(a) IN GENERAL.—” before “All orders”; and
(2) by adding at the end the following:
“(b) ORDERS AND AGREEMENTS FOR INDUSTRIAL ACTIVITIES.—Under this section, the Coast Guard industrial activities may accept orders and enter into reimbursable agreements with establishments, agencies, and departments of the Department of Defense and the Department of Homeland Security.”.

SEC. 204. DEFINING COAST GUARD VESSELS AND AIRCRAFT.
(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by inserting after section 638 the following new section:
“§ 638a. Coast Guard vessels and aircraft defined.
“(a) For the purposes of sections 637 and 638 of this title, the term Coast Guard vessels and aircraft means—
(1) any vessel or aircraft owned, leased, transferred to, or operated by the Coast Guard and under the command of a Coast Guard member; or
(2) any other vessel or aircraft under the tactical control of the Coast Guard on which one or more members of the Coast Guard are assigned and conducting Coast Guard missions.”.
(b) CEREBAL AMENDMENT.—The table of contents for chapter 17 of such title is amended by inserting after the item relating to section 638 the following:
“§ 638a. Coast Guard vessels and aircraft defined.”.

TITLE III.—ORGANIZATION
SEC. 301. VICE COMMANDANT, VICE ADMIRALS.
(a) VICE COMMANDANT.—The fourth sentence of section 47 of title 14, United States Code, is amended by striking “vice admiral” and inserting “admiral”.
(b) VICE ADMIRALS.—Section 50 of such title is amended to read as follows:
“§ 50. Vice admirals
(a)(1) The President may designate no more than 4 positions and reponsibility that shall be held by officers who—
(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and
(B) shall perform such duties as the Commandant may prescribe.
(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such position any officer of the service who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.
(3) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provided in paragraph (2) of this subsection or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.
(4) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—
(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;
(B) while hospitalized, beginning on the day of the hospitalization and ending on the date the officer is discharged from the hospital, but not for more than 180 days; and
(C) while awaiting retirement, beginning on the date the officer is detached from duty and continuing on the day before the officer’s retirement, but not for more than 60 days.
(2) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.
(3) An officer serving in a grade above rear admiral who holds the permanent grade
of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer’s permanent grade.

(d) Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.

(c) REPEAL.—Section 50c of such title is repealed.

(d) CONFORMING AMENDMENTS.—Section 51 of such title is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

“(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.

(b) An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.

(c) An officer, other than the Commandant, who, after serving less than 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.

and

(2) by striking “Area Commander, or Chief of Staff” in subsection (d)(2) and inserting “or Vice Admiral”.

(e) CLERICAL AMENDMENTS.—

(1) The section caption for section 47 of such title is amended to read as follows: “§47. Vice commandant; appointment.”

(2) The table of contents for chapter 3 of such title is amended—

(A) by striking the item relating to section 47 and inserting the following:

“§47. Vice commandant; appointment.”;

(B) by striking the item relating to section 50a; and

(C) by striking the item relating to section 50 and inserting the following:

“§50. Vice admirals.”

(f) TECHNICAL CORRECTION.—Section 47 of such title is further amended by striking “subsection—” from the fifth sentence and inserting “section—”.

(g) TREATMENT OF INCUMBENTS; TRANSITION.—

(1) Notwithstanding any other provision of law, the officer who, on the date of enactment of this Act, is serving as Vice Commandant—

(A) shall continue to serve as Vice Commandant;

(B) shall have the grade of admiral with pay and allowances of that grade; and

(C) shall be considered to have served continuously in that position for all purposes requiring a reappointment by reason of the enactment of that Act.

(2) Notwithstanding any other provision of law, an officer who, on the date of enactment of this Act, is serving as Chief of Staff, Commandant, Atlantic Area, or Commander, Pacific Area—

(A) shall continue to have the grade of vice admiral with pay and allowances of that grade until such time that the officer is relieved of his duties and appointed and confirmed to another position as a vice admiral or admiral;

(B) for the purposes of transition, may continue, for not more than 1 year after the date of enactment of this Act, to perform the duties of his current position and any other such duties that the Commandant prescribes.

SEC. 302. NUMBER AND DISTRIBUTION OF COMMISSIONED OFFICERS ON THE ACTIVE DUTY PROMOTION LIST.

(a) In General.—Section 42 of title 14, United States Code, is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

“(a) The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 7,200. This total number may be temporarily increased up to 2 percent for no more than the 60 days that follow the commissioning of a Coast Guard Academy class.

(b) The total number of commissioned officers authorized by this section shall be distributed in grade not to exceed the following percentages:

(1) 0.375 percent for rear admiral.

(2) 0.375 percent for rear admiral (lower half).

(3) 6.0 percent for captain.

(4) 15.0 percent for commander.

(5) 22.0 percent for lieutenant commander.

The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary shall be the decision maker of the Coast Guard, who is retired while serving in the grade of admiral or vice admiral, is retired while serving in the grade of admiral or vice admiral, or who, while serving in the grade of admiral or vice admiral, is retired for physical disability.

(c) The Secretary shall, at least once a year, compute the total number of commissioned officers authorized to serve in each grade by applying the grade distribution percentages of this section to the total number of commissioned officers listed on the current active duty promotion list. In making such calculations, any fraction shall be rounded to the nearest whole number. The number of commissioned officers on the active duty promotion list serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted against the total number of commissioned officers authorized to serve in each grade.

(d) by striking subsection (e) and inserting the following:

“(e) The number of officers authorized to be serving on active duty in each grade of the permanent commissioned teaching staff of the Coast Guard Academy and of the Reserve serving each commissioning, administering, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary.”; and

(3) by striking the caption of such section and inserting the following:

“§42. Number and distribution of commissioned officers on the active duty promotion list.”

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of such title is amended by striking the item relating to section 42 and inserting the following:

“42. Number and distribution of commissioned officers on the active duty promotion list.”

TITLE IV—PERSONNEL

SEC. 401. LEAVE RETENTION AUTHORITY

Section 701(f)(2) of title 10, United States Code, is amended by inserting “or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act” after “Public Law 99-338, 42 U.S.C. 5121 et seq.”

SEC. 402. LEGAL ASSISTANCE FOR COAST GUARD RESERVISTS

Section 1044(a)(4) of title 10, United States Code, is amended—

(1) by striking “(as determined by the Secretary of Defense),” and inserting “(as determined by the Secretary of Defense and the Secretary of the department in which the Coast Guard is or was operating, with respect to the Coast Guard when it is not operating as a service of the Navy),”;

(2) by striking “prescribed by the Secretary of Defense,” and inserting “prescribed by the Secretary of Defense and the Secretary of the department in which the Coast Guard is or was operating, with respect to the Coast Guard when it is not operating as a service of the Navy”;

and

(3) by striking the item relating to section 47. Vice commandant; appointment.

Section 214(a) of title 14, United States Code, is amended by inserting “or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act” after “Public Law 99-338, 42 U.S.C. 5121 et seq.”

SEC. 405. REIMBURSEMENT FOR CERTAIN MEDICAL-RELATED TRAVEL EXPENSES

Section 1074(a)(1) of title 10, United States Code, is amended—

(1) by striking “IN GENERAL.—In” and inserting “IN GENERAL.—”;

and

(2) by adding at the end the following:

“(2) In any case in which a covered beneficiary resides on an INCONUS island that lacks public access roads to the mainland and is referred by a primary care physician to a specialty care provider on the mainland who provides services less than 100 miles from the location in which the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary, and, with respect to an adult necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary’s family who is not least 21 years of age.

SEC. 404. RESERVE COMMISSIONED WARRANT OFFICER TO LIEUTENANT PROMOTION AND APPOINTMENT

Section 214(a) of title 14, United States Code, is amended to read as follows:

“(a) The President may appoint temporary commissioned officers to the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine, and

“(2) in the Coast Guard Reserve in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers of the Coast Guard Reserve.”

SEC. 405. ENHANCED STATUS QUO OFFICER PROMOTION AND APPOINTMENT

(a) Section 238(a) of title 14, United States Code, is amended—

(1) by inserting “and” after “considered.”;

and

(2) by striking “consideration,” and the number of officers the board may recommend for promotion” and inserting “consideration,”

(b) Section 238 of such title is amended—

(1) by inserting “(a)” before “The Secretary”;

and

(2) by adding at the end the following:

“(b) In addition to the information provided pursuant to subsection (a), the Secretary may furnish the selection board—

“(1) specific direction relating to the needs of the service for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and

“(2) such other guidance that the Secretary may need to enable the board to properly perform its functions. Sections 238 and 1074(f) of such title, as added or amended by this subsection, shall apply to officers on the active duty promotion list serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted against the total number of commissioned officers authorized to serve in each grade.”

Title 10, United States Code, is amended—

(A) by inserting “or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act” after “Public Law 99-338, 42 U.S.C. 5121 et seq.”

and

(B) by striking “and” after “considered.”;

and

(2) by striking “IN GENERAL.—In” and inserting “IN GENERAL.—”;

and

(3) by adding at the end the following:

“(2) In any case in which a covered beneficiary resides on an INCONUS island that lacks public access roads to the mainland and is referred by a primary care physician to a specialty care provider on the mainland who provides services less than 100 miles from the location in which the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary, and, with respect to an adult necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary’s family who is not least 21 years of age.

Title 10, United States Code, is amended—

(A) by inserting “or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act” after “Public Law 99-338, 42 U.S.C. 5121 et seq.”

and

(B) by striking “consideration,” and the number of officers the board may recommend for promotion” and inserting “consideration,”
Sec. 501. Chief Acquisition Officer.

(a) In General.—Chapter 3 of title 14, United States Code, is amended by adding at the end of such chapter the following:

"§ 55. Chief Acquisition Officer

"(a) In General.—There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved). The Chief Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual's primary duty.

"(b) Qualifications.—The Chief Acquisition Officer shall be an acquisition professional with a Level III certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent as—

"(1) the program executive officer; 

"(2) the program manager of a Level 1 or Level 2 acquisition project or program; 

"(3) the deputy program manager of a Level 1 or Level 2 acquisition; or 

"(4) a combination of such positions.

"(c) Functions of the Chief Acquisition Officer.—The functions of the Chief Acquisition Officer include—

"(1) monitoring the performance of programs and projects on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;

"(2) maximizing the use of full and open competition at the prime contract and sub-contract levels in the acquisition of property, capabilities, and services by the Coast Guard by establishing policies, procedures, and practices so that the Coast Guard receives a sufficient number of competitive proposals from responsible sources to fulfill the Government's requirements, including performance schedules, at the lowest cost or best value considering the nature of the property or service procured;

"(3) making acquisition decisions in concurrence with the technical authority, or technical authorities, as appropriate, of the Coast Guard, as designated by the Commandant, and ensuring that applicable laws and decisions establishing procedures within the Coast Guard;

"(4) ensuring the use of detailed performance specifications in instances in which performance based contracting is used;

"(5) managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;

"(6) developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;

"(7) assessing the requirements established for Coast Guard procurement and delivery schedules, at the lowest cost or best value considering the nature of the property or service procured;

"(8) developing strategies and specific plans for hiring, training, and professional development;

"(9) reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.

(b) Clerical Amendment.—The table of contents for chapter 3 of title 14, United States Code, is amended by adding at the end the following:

"55. Chief Acquisition Officer."
"(1) PROJECT OR PROGRAM MANAGER DEFINED.—In this section, the term ‘project or program manager’ means an individual designated—
(A) to develop, produce, and deploy a new asset to meet identified operational requirements; and
(B) to manage cost, schedule, and performance of the acquisition or project or program.

"(2) LEVEL 1 PROJECTS.—An individual may not be assigned as the project or program manager for a Level 1 acquisition unless the individual holds a Level III acquisition certification as a program manager.

"(3) Promotion and tenure. —An individual may not be assigned as the project or program manager for a Level 2 acquisition unless the individual holds a Level II acquisition certification as a program manager.

"(b) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM AND PROJECT MANAGERS.—Not later than one year after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, and accountability of program and project managers for the management of acquisition programs and projects. The guidance shall—
(1) specify the education, training, experience, and assignments necessary for career progression of those officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition and acquisition workforce have expertise, and are appointed to project or program management positions; and
(2) authorities available to project or program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to project or program management positions; and
(c) ACQUISITION WORKFORCE.—
(1) IN GENERAL.—The Commandant shall designate a sufficient number of positions to be in the Coast Guard’s acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.

(2) REQUIRED POSITIONS.—The Commandant shall ensure that members of the acquisition workforce have expertise, education, and training in at least 1 of the following career fields:
(A) Acquisition logistics.
(B) Auditing.
(C) Business and cost estimating, and financial management.
(D) Contracting.
(E) Facilities engineering.
(F) Industrial and contract property management.
(G) Information technology.
(H) Manufacturing, production, and quality assurance.
(I) Program management.
(J) Purchasing.
(K) Science and technology.
(L) Systems engineering, research, development, and engineering.
(M) Test and evaluation.
(N) ACQUISITION WORKFORCE EXPERIENCED HIRING AUTHORITY.—
(1) IN GENERAL.—For purposes of sections 3304, 5333, and 5753 of title 5, the Commandant may—
(i) designate any category of acquisition positions within the Coast Guard as shortage category positions; and
(ii) use the authorities in such sections to recruit, hire, and retain highly qualified persons directly to positions so designated.
(2) LIMITATION.—The Commandant may not appoint a person to a position of employment under this paragraph after September 30, 2012.
(d) MANAGEMENT INFORMATION SYSTEM.—
"(1) IN GENERAL.—The Commandant shall establish a management information system to improve acquisition workforce management and reporting.

"(2) INFORMATION MAINTAINED.—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:
(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition certifications.
(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.
(C) CAREER PATHS.—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—
(i) ensure the hierarchical relationships between officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and
(ii) establish a management information system on such career paths.

§ 564. Acquisition and professional experience for acquisition personnel
(a) IN GENERAL.—Not less than 180 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall—
(1) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and
(2) establish a management information system on such career paths.

§ 565. Prohibition on use of lead systems integrators
(a) IN GENERAL.—Except as provided in subsection (b), the Commandant may not use any acquisition contract awarded to a lead systems integrator by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011—
(1) to conduct acquisition management and technical requirements; and
(2) to perform any functions that are otherwise available to the Commandant.

(b) FULL AND OPEN COMPETITION.—The Commandant may not use a private sector entity as a lead systems integrator for the acquisition of a capability or an asset with an expected service life of 10 years and with a total acquisition cost that is equal to or exceeds $10,000,000 awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011—
(1) to provide that all certifications for an end State of Origin or Ahead of Schedule under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;
(2) to require that the Commandant maintain the authority to establish, approve, and maintain technical requirements; and
(3) to require that any procurement competitive performance be on the status of systems integrators, including the extent to which the work performed met all performance, cost, and schedule requirements;
(c) FULL AND OPEN COMPETITION.—The Commandant and any lead systems integrator engaged by the Coast Guard, pursuant to the exceptions described in subsection (b), may use any acquisition contract awarded for any acquisition contract awarded after the date of enactment of that Act, unless otherwise excepted in accordance with the Commandant’s determination under this subsection, and the amendments made by that Act, and the Federal Acquisition Regulations.
(b) **Prohibited Contract Provisions.**— The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.

(c) **Integrated Product Teams.**—Integrate product teams, and all teams that oversee integrated product teams, shall be chaired by the Commandant or his designee.

(d) **Deepwater Technical Authorities.**—The Commandant shall maintain or designate the technical authorities to establish, approve, and maintain technical requirements. Such designation shall be in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 55 of this title.

§ 567. **Department of Defense consultation**

(a) **In General.**—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek to make such arrangements with the Department of the Treasury, the General Services Administration, and other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

(b) **Inter-service Technical Assistance.**—The Commandant shall seek to enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, or the Office of the Assistant Secretary of the Navy for Installation, Energy, and Computing, for the purpose of providing intelligence or technical assistance to the Commandant. The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

(1) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(2) operations to prevent or respond to a national security emergency (as defined in section 7010(b) of title 46);

(3) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment;

(4) an operation in response to a natural disaster or major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5212 et seq.);

(5) a program or project declared by the Secretary of the Navy under section 2201 of title 10.

(c) **Technical Requirement Approval Procedures.**—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

§ 568. **Unidentified contractual actions**

(a) **In General.**—The Coast Guard may not enter into an unidentified contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(b) **Definitions.**—In this section:

(1) **Unidentified Contractual Action.**—The term ‘‘unidentified contractual action’’ means a new procurement action entered into by the Coast Guard with respect to costs incurred during performance of the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

(2) **Exclusion.**—The term ‘‘unidentified contractual action’’ does not include contractual actions with respect to—

(i) foreign military sales;

(ii) purchases in an amount not in excess of the simplified acquisition threshold; or

(iii) special access programs.

(c) **Qualifying Proposal.**—The term ‘‘qualifying proposal’’ means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

§ 571. **Identification of major system acquisition programs**

(a) **In General.**—

(1) **Support Mechanisms.**—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for acquisitions under this subchapter.

(2) **Mission Analysis; Affordability Assessment.**—The Commandant may not initiate a Major Acquisition Program or project until the Commandant—

(A) completes a mission analysis that—

(i) identifies any gaps in capability; and

(ii) develops a clear mission need; and

(B) prepares a preliminary affordability assessment for the project or program.

(3) **Elements.**—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of mature and stable operational requirements for acquisitions under this subchapter.

(4) **Evaluations.**—The Commandant shall evaluate the initial project or program until the Commandant—

(A) completes a mission analysis that—

(i) identifies any gaps in capability; and

(ii) develops a clear mission need; and

(B) prepares a preliminary affordability assessment for the project or program.

(b) **Requirements.**—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of mature and stable operational requirements for acquisitions under this subchapter.

(c) **Technical Analysis.**—The Commandant shall develop and implement mechanisms to ensure that trade-offs among cost, schedule, and performance are considered in the establishment of preliminary operational requirements for development and production of new assets and capabilities for Level 1 and Level 2 acquisitions projects and programs.

(d) **Human Resource Capital Planning.**—The Commandant shall develop staffing predictions, define human capital performance initiatives, and identify preliminary training needs for any such project or program.

(e) **DHS Acquisition Approval.**—A Level 1 or Level 2 acquisition project or program may not be implemented unless it is approved by the Department of Homeland Security Acquisition Review Board or the Jointreview Board.

§ 572. **Acquisition**

(a) **In General.**—The Commandant may not establish a Level 1 or Level 2 acquisition project or program approved under section 55 unless the Commandant—

(1) clearly defines the operational requirements for the project or program;
(2) establishes the feasibility of alternatives; 
(3) develops an acquisition project or program baseline; 
(4) produces a life-cycle cost estimate; and 
(5) assesses the relative merits of alternatives to determine a preferred solution in accordance with the requirements of this section.

(b) ANALYSIS OF ALTERNATIVES.—

(1) IN GENERAL.—The Commandant shall conduct an analysis of alternatives for the asset or capability to be acquired in an analytically and select phase of the acquisition process. 

(2) REQUIREMENTS.—The analysis of alternatives shall be conducted by a Federally-funded research and development center, a qualified entity of the Department of Defense, or a similar independent third party entity that has appropriate acquisition expertise and has no substantial financial interest in any part of the acquisition project or program that is the subject of the analysis. At a minimum, the analysis of alternatives shall include:

(A) an assessment of the technical maturity and technical and other risks;

(B) an examination of capability, interoperability and other disadvantages; 

(C) an evaluation of whether different combinations or quantities of specific assets or capabilities could meet the Coast Guard’s overall performance needs;

(D) a discussion of key assumptions and variables, and sensitivity to change in such assumptions and variables;

(E) when an alternative is an existing asset or prototype, an evaluation of relevant safety and performance records and costs; and,

(F) a calculation of life-cycle costs including:

(i) an examination of likely research and development costs and the levels of uncertainty associated with such estimated costs;

(ii) an examination of likely production and deployment costs and levels of uncertainty associated with such estimated costs; 

(iii) an examination of likely operating and support costs and the levels of uncertainty associated with such estimated costs; and

(iv) if they are likely to be significant, an examination of likely disposal costs and the levels of uncertainty associated with such estimated costs; and

(v) such additional measures as the Commandant or the Secretary of Homeland Security determine necessary for appropriate evaluation of the asset; and

(G) the business case for each viable alternative.

(c) TEST AND EVALUATION MASTER PLAN.—

(1) IN GENERAL.—For any Level 1 or Level 2 acquisition project or program the Chief Acquisition Officer shall approve a test and evaluation master plan specific to the acquisition project or program for the capability, asset, or subsystems of the capability or asset intended to minimize technical, cost, and schedule risk as early as practicable in the development of the project or program.

(2) TEST AND EVALUATION STRATEGY.—The master plan shall—

(A) set forth an integrated test and evaluation strategy that will verify that capability, asset, or subsystem of the capability or asset is approved for production; and

(B) require that adequate developmental tests and evaluations and operational tests and evaluations described in paragraph (A) are performed to inform production decisions.

(3) OTHER COMPONENTS OF THE MASTER PLAN.—At a minimum, the master plan shall identify:

(A) the key performance parameters to be resolved through an integrated test and evaluation strategy; 

(B) critical operational issues to be assessed in the key performance parameters; 

(C) specific development test and evaluation phases and the scope of each phase; 

(D) modeling and simulation activities to be performed, if any, and the scope of such activities; 

(E) early operational assessments to be performed, if any, and the scope of such assessments; 

(F) operational test and evaluation phases; 

(G) an estimate of the resources, including funds, that will be required for all test, evaluation, assessment, modeling, and simulation activities; and,

(H) the Government entity or independent entity that will perform the test, evaluation, assessment, modeling, and simulation activities.

(d) UPDATE.—The Chief Acquisition Officer shall notify the program manager and the Joint Review Board or the Joint Review Board (or its equivalent) whenever there is a revision to project or program test and evaluation strategy, scope, or phasing.

(e) LIMITATION.—The Coast Guard may not—

(A) proceed beyond that phase of the acquisition process that entails approving the supporting acquisition of a capability or asset before the master plan is approved by the Chief Acquisition Officer; or

(B) award any production contract for a capability, asset, or subsystem for which a master plan is required under this subsection before the master plan is approved by the Chief Acquisition Officer.

(f) LIFE-CYCLE COST ESTIMATES.—

(1) IN GENERAL.—The Commandant shall implement mechanisms to ensure the development and regular updating of life-cycle cost estimates for each Level 1 or Level 2 acquisition to ensure that these estimates are considered in decisions to develop or produce new or enhanced capabilities and assets.

(2) TYPES OF ESTIMATES.—In addition to life-cycle cost estimates that may be developed by acquisition program offices, the Commandant may require that an independent life-cycle cost estimate be developed for each Level 1 or Level 2 acquisition project or program.

(3) REQUIRED UPDATES.—For each Level 1 or Level 2 acquisition project or program the Commandant shall require that life-cycle cost estimates shall be updated before each milestone decision is concluded and the project or program enters a new acquisition phase.

(g) DHS ACQUISITION APPROVAL.—A project or program may enter the obtain phase under section 573 unless the Department of Homeland Security Acquisition Review Board or the Joint Review Board (or other entity established by the Secretary of Homeland Security) and the Joint Review Board have approved the analysis of the alternative for the project. The Joint Review Board may approve the low rates initial production quantity for the program or program if such an initial production quantity is planned by the acquisition project or program and deemed appropriate by the Joint Review Board.

§573. Preliminary development and demonstration

(a) IN GENERAL.—The Commandant shall ensure that developmental test and evaluation, operational test and evaluation, life cycle cost estimates, and the development and demonstration requirements are met to confirm that the projects or programs meet the requirements described in the mission-need statement and the operational-requirement documents developed and demonstration objectives:

(1) To demonstrate that the most promising design, manufacturing, and production processes is based on a stable, producible, and cost-effective product design.

(2) To ensure that the product capabilities meet contract specifications, acceptable operational performance requirements, and system security requirements.

(3) To ensure that the product design is mature enough to commit to full production and deployment.

(b) TESTS AND EVALUATIONS.—

(1) IN GENERAL.—The Commandant shall ensure that the Coast Guard conducts developmental tests and evaluations and operational tests and evaluations of a capability or asset and the subsystems of the capability or asset for which a master plan has been prepared under section 572(c)(1).

(2) USE OF THIRD PARTIES.—The Commandant shall ensure that the Coast Guard uses independent third parties with expertise in testing and evaluations of systems, assets and the subsystems of the capabilities or assets being acquired to conduct developmental tests and evaluations and operational tests and evaluations whenever the Coast Guard lacks the capability to conduct the tests and evaluations required by a master plan.

(3) COMMUNICATION OF SAFETY CONCERNS.—The Commandant shall require that safety concerns identified during developmental or operational tests and evaluations or through independent or Government conducted design assessments of capabilities or assets and subsystems of capabilities or assets to be acquired by the Coast Guard shall be communicated as soon as practicable, but not later than 30 days after the completion of the test or assessment event or activity that identified the safety concern, to the program manager for the capability or asset and the subsystems concerned and to the Chief Acquisition Officer.

(4) ASSET ALREADY IN LOW, INITIAL, OR FULL RATE PRODUCTION TEST AND EVALUATION.—When a capability or asset already in low, initial, or full rate production identifies a safety concern with the capability or asset or a series of capabilities or assets and the subsystems of the capability or asset not previously identified during developmental or operational test and evaluation, the Commandant shall—

(A) notify the program manager and the Chief Acquisition Officer of the safety concern as soon as practical, but not later than 30 days after the completion of the test and evaluation event or activity that identified the safety concern; and

(B) notify the Chief Acquisition Officer and include in such notification—

(i) a description of the actions that will be taken to correct or mitigate the safety concern in all capabilities or assets and subsystems of the capabilities or assets yet to be produced, and the date by which those actions will be taken; 

(ii) an explanation of the actions that will be taken to correct or mitigate the safety concern in previously produced capabilities or assets and subsystems of the capabilities or assets, and the date by which those actions will be taken; and

(iii) an assessment of the adequacy of current funding to correct or mitigate the safety concern in capabilities or assets and subsystems of the capabilities or assets and in previously produced capabilities or assets and subsystems.

(c) TECHNICAL CERTIFICATION.—
(1) **IN GENERAL.**—The Commandant shall ensure that any Level 1 or Level 2 acquisition project or program is certified by the technical authority of the Coast Guard after review by an independent third party with capabilities in the mission area, asset, or particular asset component.

(2) **TEMPEST TESTING.**—The Commandant shall:

   (a) cause all electronics on all aircraft, surface, and shore assets that require TEMPEST certification and that are delivered after an April 1 date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 to be tested in accordance with master plan standards and communications security standards by an independent third party that is authorized by the Federal Government to perform such testing; and

   (b) certify that the assets meet all applicable TEMPEST requirements.

(3) **VESSEL CLASSIFICATION.**—The Commandant shall cause each cutter, other than the National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 to be classed by the American Bureau of Shipping before final acceptance.

(4) **ACQUISITION DECISION.**—The Commandant may not proceed to full scale production, deployment, and support of a Level 1 or Level 2 acquisition project or program unless the Department of Homeland Security Acquisition Review Board has verified that the delivered asset or system meets the project or program performance and cost goals.

§ 574. Acquisition, production, deployment, and support

In General.—The Commandant shall:

(1) ensure there is a stable and efficient production and support capability to develop an asset or system;

(2) conduct follow on testing to confirm monitor performance and correct deficiencies; and

(3) conduct acceptance tests and trails upon the delivery of each asset or system to ensure the delivered asset or system achieves full operational capability.

Subsection (a) of this section shall—

(1) execute the productions contracts;

(2) ensure the delivered products meet operations and support requirements established in the acquisition program baseline;

(3) validate manpower and training requirements to meet system needs to operate, maintain, support, and instruct the system; and

(4) prepare a project or program transition plan to enter into programmatic sustainment, operations, and support.

§ 575. Acquisition program baseline breach

(1) **IN GENERAL.**—The Commandant shall submit a report to the appropriate congressional committees in the manner the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

(2) **CHIEF ACQUISITION OFFICER.**—The term ‘Chief Acquisition Officer’ means the officer appointed under section 56 of this title.

(3) The term ‘Commandant’ means the Commandant of the Coast Guard.

(4) **JOINT REVIEW BOARD.**—The term ‘Joint Review Board’ means the Department of Homeland Security’s Investment Review Board, Joint Requirements Council, or other entity within the Department designated by the Secretary as the Joint Review Board for purposes of this chapter.

(5) **LEVEL 1 ACQUISITION.**—The term ‘Level 1 acquisition’ means—

   (A) an acquisition by the Coast Guard—

   (i) the estimated life-cycle costs of which exceed $1,000,000,000; or

   (ii) the estimated total acquisition costs of which exceed $300,000,000; or

   (B) any acquisition that the Chief Acquisition Officer of the Coast Guard determines to have a special interest—

   (i) due to—

   (I) the experimental or technically immature nature of the asset;

   (II) the technological complexity of the asset;

   (III) the commitment of resources; or

   (IV) the nature of the capability or set of capabilities thereby added to or beyond the acquisition program baseline.

   (6) **LEVEL 2 ACQUISITION.**—The term ‘Level 2 acquisition’ means an acquisition by the Coast Guard—

   (A) the estimated life-cycle costs of which are equal to or less than $1,000,000,000, but greater than $300,000,000; or

   (B) the estimated total acquisition costs of which are equal to or less than $300,000,000, but greater than $100,000,000.

   (7) **LIFE-CYCLE COST.**—The term ‘life-cycle cost’ means all costs for development, procurement, construction, and operations and support for a particular asset, system, or subsystem, without regard to funding source or management control.

(2) **SUSTAINMENT.**—The Commandant shall cause each cutter, other than the National Security Cutter, to be classed by the American Bureau of Shipping before final acceptance.

(a) **CONFORMING AMENDMENT.**—The part analysis for part 1 of title 14, United States Code, is amended by striking the item relating to chapter 13 the following:

   ‘15. Acquisitions ....................................561’.

SEC. 503. REPORT AND GUIDANCE ON EXCESS PASS-THROUGH CHARGES.

(a) **COMPTROLLER GENERA. REPORT—**

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall issue a report on pass-through charges on contracts, subcontracts, delivery orders, and task orders that were executed by a lead systems integrator or subcontractor, during the 3 fiscal years preceding the date of enactment of this Act.

(2) **MATTERS COVERED.**—The report under this subsection—

   (A) shall assess the extent to which the Coast Guard paid excessive pass-through charges to contractors or subcontractors that provided little or no value to the performance of a contract or the production of a procured asset; and

   (B) shall assess the extent to which the Comptroller General has determined that contracts or subcontracts were vulnerable to excessive pass-through charges on any specific category of contracts or by any specific category of contractors.

(b) **GUIDANCE REQUIRED.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Commandant shall—

   (A) ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are executed by a private entity acting as a lead systems integrator or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor.

   (B) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor.

   (C) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

   (D) identify any exceptions determined by the Comptroller General to be in the best interest of the Government.

(2) **SCOPE OF GUIDANCE.**—The guidance prescribed under this subsection—

   (A) shall not apply to any firm, fixed-price contract or subcontract, delivery order, or task order that—

   (i) is based on the basis of adequate price competition, as determined by the Commandant; or
(ii) for the acquisition of a commercial item, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and

(b) may include such additional exceptions as the Commandant determines to be necessary in the interest of the United States.

(c) EXCESSIVE PASS-THROUGH CHARGE DEFINITION.—A charge is excessive if the charge is unreasonable charges for the direct costs of managing lower-tier contractors and subcontractors and overhead and profit based on such direct costs.

d) APPLICATION OF GUIDANCE.—The guidance prescribed under this section shall apply to contracts awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of this Act.

TITLE VI—SHIPping AND NAVIGATION

SEC. 601. TECHNICAL AMENDMENTS TO CHAPTER 313 OF TITLE 46, UNITED STATES CODE.

(a) In General.—Chapter 313 of title 46, United States Code, is amended—

(1) by striking “of Transportation” in sections 31302, 31321, 31330, and 31343 each place it appears;

(2) by striking “and” after the semicolon in section 31301(5)(F);

(b) Secretary as Mortgagee.—Section 31329(d) of such title is amended by striking “Secretary of Commerce or Transportation is a mortgagee under this chapter,” and inserting “Secretary of Transportation is a mortgagee under this chapter.”;

(c) Secretary of Transportation.—Section 31329(d) of such title is amended by striking “Secretary of Commerce or Transportation is a mortgagee under this chapter,” and inserting “Secretary of Transportation.”;

(d) Mortgagee.—

(i) Section 31330(a)(1) of such title, as amended by subsection (a)(1) of this section, is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “Secretary; or” in subparagraph (C) and inserting “Secretary;”; and

(C) by striking subparagraph (D).

(ii) Section 31330(a)(2) is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “- faith; or” in subparagraph (C) and inserting “- faith;”; and

(C) by striking subparagraph (D).

SEC. 602. CLARIFICATION OF RULEMAKING AUTHORITY.

(a) In General.—Chapter 701 of title 46, United States Code, is amended by adding at the end of this chapter—

“§ 70122. Regulations.

“Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.”.

(b) CLERICAL AMENDMENT.—The table of contents of chapter 701 of such title is amended by adding at the end the following new item:

“70122. Regulations.”.

SEC. 603. COAST GUARD TO MAINTAIN LORAN-C NAVIGATION SYSTEM.

(a) In General.—The Secretary of Transportation shall maintain the LORAN-C navigation system until such time as the Secretary is authorized by statute, explicitly referencing this section, to cease operating the system. The Secretary may transfer from the Federal Aviation Administration and other agencies of the Department of Transportation such funds as may be necessary to reimburse the Coast Guard for related expenses.

(b) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Transportation, in addition to funds authorized under section 101 of this Act for the Coast Guard, $5,000,000 for the LORAN-C system and for the transition to eLORAN technology.

SEC. 604. ICEBREAKERS.

(a) Analyses.—Not later than 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, which ever occurs later, the Commandant of the Coast Guard shall—

(1) conduct a comparative cost-benefit analysis of—

(A) rebuilding, renovating or improving existing vessels of polar icebreakers for operation by the Coast Guard;

(B) constructing new polar icebreakers for operation by the Coast Guard for operation by the Coast Guard;

(C) any combination of the activities described in subparagraphs (A) and (B), to carry out the missions of the Coast Guard;

(2) conduct an analysis of the impact on mission capacity and the ability of the United States to maintain a presence in the polar regions under the Law of the Sea that results from recapitalization of the polar icebreaker fleet, either by constructing new polar icebreakers or rebuilding, renovating, or improving the existing fleet of polar icebreakers, is not fully funded.

(b) Reports to Congress.—

(1) Not later than 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, which ever occurs later, the Commandant of the Coast Guard shall submit a report containing the results of the study, together with recommendations the Commandant deems appropriate under section 383(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(2) Not later than 1 year after the date of enactment of this Act, the Commandant shall submit a report containing the results of the analyses required under paragraphs (1) and (2) of subsection (a), together with recommendations the Commandant deems appropriate under section 383(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 605. VESSEL SIZE LIMITS.

(a) LENGTH, TONNAGE, AND HORSEPOWER.—Section 12113(d)(2) of title 46, United States Code, is amended—

(1) by inserting “and” after the semicolon at the end of subparagraph (A)(i); and

(2) by striking “and” at the end of subparagraph (B).

(3) by striking subparagraph (A)(iii); and

(b) Conforming Amendments.—

(1) VESSEL REBUILDING AND REPLACEMENT.—Section 208(g) of the American Fisheries Act (title II of division C of Public Law 108-275; 112 Stat. 2681-627) is amended to read as follows—

“(g) VESSEL REBUILDING AND REPLACEMENT.—

“(1) IN GENERAL.—

“(A) REBUILD OR REPLACE.—Notwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels on transferring permits or licenses for a replacement vessel contained in sections 679.2 and 679.4 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 and except as provided in paragraph (4), the owner of a vessel eligible under subsection (a), (b), (c), or (d) of section 679.2 who wishes to improve vessel safety and operational efficiencies (including fuel efficiency), may rebuild or replace that vessel (including fuel efficient vessels) with a vessel documented with a fishery endorsement under section 12113 of title 46, United States Code.

“(B) SAME REQUIREMENTS.—The rebuilt or replacement vessel shall be eligible in the same manner and subject to the same restrictions and limitations under such subsection as the vessel being rebuilt or replaced.

“(C) TRANSFER OF PERMITS AND LICENSES.—Each fishing permit and license held by the owner of a vessel or vessel to be rebuilt or replaced under paragraph (A) shall be transferred to the rebuilt or replacement vessel.

“(2) RECOMMENDATIONS OF NORTH PACIFIC COUNCIL.—The North Pacific Council may recommend for approval by the Secretary such conservation and management measures, including size limits and measures to control fishing capacity, in accordance with section 383(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

“(3) SPECIAL RULE FOR REPLACEMENT OF VESSELS.—

“(A) IN GENERAL.—Notwithstanding the requirements of subsections (b)(2), (c)(1), and
(c) by striking (2) of section 12113 of title 46, United States Code, a vessel that is eligible under subsection (a) or (b) of (3) or (4) of section 303(a) of the Magnuson-Stevens Act (1) or (2) of section 303(a) of the Magnuson-Stevens Act; and section 102.37.225 of title 41, Code of Federal Regulations;

(3) to make the vessel available to the United States Government if it is needed for use in the Commandant of the Coast Guard in time of war or a national emergency; and

(c) ELIGIBLE ENTITY DEFINED—In this section, the term ‘‘eligible entity’’ means a State or local government, nonprofit corporation, educational agency, community development organization, or other entity that agrees to comply with the conditions established under this section.

By Mr. SPECTER (for himself and Mr. CASEY):

S. 1195. A bill to require the Secretary of Agriculture to carry out the Philadelphia universal feeding pilot program until the last day of the 2012-2013 school year of the School District of Philadelphia; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SPECTER. Mr. President, I rise today to speak on the Department of Agriculture’s decision to end the Philadelphia School District’s Universal Feeding Pilot Program and to introduce legislation extending the program. While changes to the Philadelphia program may be necessary, the appropriate time to consider these changes is during congressional reauthorization of the Child Nutrition Act. Senator CASEY and I are seeking to extend the program through the 2012-13 school year. This extension is necessary to ensure that thousands of children in Philadelphia’s poorest schools are not deprived of the nutritional assistance they have relied on for over 17 years.

Recognizing the value of proper nutrition to successful learning, Congress, in 1946, passed the Richard B. Russell National School Lunch Act. This act provides the authority for the School Lunch Program, as well as several other child nutrition initiatives. In 1966 Congress expanded on its commitment to child nutrition by passing the Child Nutrition Act, which authorized the School Breakfast Program. These programs have continued to evolve through changing times and changing technologies to ensure that the goal of providing nutrition assistance to our Nation’s school children is met.

In 1991 the Department of Agriculture worked with the Philadelphia School District to develop a more streamlined method of reimbursing the School District for costs under the National School Breakfast and School Lunch Programs, and ensuring all eligible students receive free meals.

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Recognizing the value of proper nutrition to successful learning, Congress, in 1946, passed the Richard B. Russell National School Lunch Act. This act provides the authority for the School Lunch Program, as well as several other child nutrition initiatives. In 1966 Congress expanded on its commitment to child nutrition by passing the Child Nutrition Act, which authorized the School Breakfast Program. These programs have continued to evolve through changing times and changing technologies to ensure that the goal of providing nutrition assistance to our Nation’s school children is met.

In 1991 the Department of Agriculture worked with the Philadelphia School District to develop a more streamlined method of reimbursing the School District for costs under the National School Breakfast and School Lunch Programs, and ensuring all eligible students receive free meals.
This new method eliminated paper applications for free school meals, and replaced them with a socioeconomic survey based method of determining reimbursement rates and eligibility.

Paper applications are costly, and parents have often failed to return them. The socioeconomic survey based approach was chosen because it reduced administrative overhead costs and is thought to better ensure that all eligible students are accounted for. In addition, by providing Universal Service the stigma associated with receiving a free or reduced price school meal is eliminated. Indeed, during the first year of the Universal Feeding Pilot Program, the Philadelphia School District saw a 14 percent increase in lunch participation in elementary schools, a 45 percent increase in middle schools and a 180 percent increase in high schools. The Philadelphia Universal Feeding Pilot Program has successfully increased student participation in the school meal program. Should this program be ended, as the Department of Agriculture would have it, children in the Philadelphia School District will have to learn to fend for themselves, and will have to turn to service bureaus in Washington, DC, which students in the Philadelphia School District will have to turn to service bureaus in Washington, DC, which students often fail to return. 

The students and parents in 200 of Philadelphia's poorest schools have not filled out paper applications for free and reduced priced school meals in over seventeen years. It is almost certain that some parents will fail to return paper applications to the school district, resulting in the underreporting of eligible students. In fact, the Secretary of Agriculture tacitly acknowledges the ineffectiveness of paper applications by offering outreach assistance to the Philadelphia School District.

A decrease in the amount of students claiming free or reduced lunches will lower the Department of Agriculture's reimbursement rate to the Philadelphia School District. Reducing the school meal reimbursement rate will not only cause the Philadelphia School District to lose valuable programs in return to the school meals program, but because other grant funding is often based on the percentage of low income students in a district, as determined by participation rates in the school meal program, the District could potentially lose millions of dollars in other state and Federal grant funding. Federal E-rate funding, for example, which is used for educational technology, is based directly on school meal program eligibility percentages.

Congress is expected to take up the Child Nutrition Act reauthorization later this year. Universal Feeding and the National School Breakfast and Lunch Program will be a part of this debate, and this is an appropriate time and place to consider changes to the program. We know from experience that Congressional action is not always as swift as planned, and that the legislative calendar changes from week to week if not from day to day.

Therefore, Senator CASEY and I introduce legislation today to extend the Philadelphia School District's Universal Feeding Pilot Program through the close of the 2012-2013 school year to ensure that Philadelphia school children receive the necessary nutritional assistance until Congress can enact a new policy.

Submitted Resolutions

Senator resolution 168—Commending the University of Washington Women's softball team for winning the 2009 NCAA Women's College World Series

Mrs. MURRAY (for herself and Ms. CANTWELL) submitted the following resolution; which was considered and agreed to:

S. RES. 168

Whereas on June 2, 2009, for the first time in university history, the University of Washington Women Huskies won the National Collegiate Athletic Association ("NCAA") national softball championship game with a 3-2 victory over the University of Florida Gators;

Whereas University of Washington pitcher Danielle Lawrie was named the Women's College World Series Most Valuable Player and the USA Softball National Collegiate Player of the Year;

Whereas the Huskies finished the 2009 season with an impressive record of 51-12;

Whereas the members of the 2009 University of Washington softball team are excellent representatives of a university that is 1 of the premier academic institutions in Washington State, producing many outstanding student-athletes and other leaders;

Whereas the members of the women's softball team have brought great honor to themselves, their families, the University of Washington, and the State of Washington:

Resolved, That the Senate—

(1) congratulates the University of Washington softball team for winning the 2009 Women's College World Series;

(2) recognizes the achievements of the players, coaches, and staff whose hard work and dedication helped the University of Washington win the championship; and

(3) respectfully requests the Secretary of the Senate to transmit an enrolled copy of this resolution to—

(A) Mark A. Emmert, president of the University of Washington;

(B) Scott Woodward, director of athletics of the University of Washington; and

(C) Heather Tarr, head coach of the University of Washington softball team.

Senator resolution 169—Expressing the sense of the Senate that the government of the former Yugoslav Republic of Macedonia should work within the framework of the United Nations process with Greece to achieve longstanding United States and United Nations policy goals of finding a mutually acceptable composite name, with a geographical qualifier and for all international uses for the former Yugoslav Republic of Macedonia

Mr. MENENDEZ (for himself, Ms. SNOWE, Mrs. SHAHRIEN, and Ms. MIKULSKI) submitted the following resolution; which was considered and agreed to by the Committee on Foreign Relations:

S. RES. 169

Whereas, on April 8, 1993, the United Nations General Assembly admitted as a member the former Yugoslav Republic of Macedonia, under the name the "former Yugoslav Republic of Macedonia";

Whereas United Nations Security Council Resolution 1171 (1998) declared that the international dispute over the name must be resolved to maintain peaceful relations between Greece and the former Yugoslav Republic of Macedonia and regional stability;

Whereas Greece is a strategic partner and ally of the United States in bringing political stability and economic development to the Balkan region, having invested over $20,000,000,000 in the countries of the region, thereby creating over 200,000 new jobs, and having contributed over $750,000,000 in development aid for the region;

Whereas Greece has invested over $1,000,000,000,000 in the former Yugoslav Republic of Macedonia, thereby creating more than 10,000 new jobs and having contributed $110,000,000 in development aid;

Whereas Senate Resolution 300, introduced in the 110th Congress, urged the former Yugoslav Republic of Macedonia to abstain from hostile activities and stop the utilization of materials that violate provisions of the United Nations-brokered Interim Agreement between the former Yugoslav Republic of Macedonia and Greece regarding "hostile activities or propaganda";

Whereas NATO's Heads of State and Government unanomously agreed in Bucharest on April 4, 2008, that "...within the framework of the work of the UN, and urge intensified efforts towards that goal."; and

Whereas authorities in the former Yugoslav Republic of Macedonia urged their citizens to boycott Greek investments in the
country and not to travel to Greece: Now, therefore, be it
Resolved, That the Senate—
(1) urges the Government of the former Yugoslav Republic of Macedonia to work within the framework of the United Nations process with Greece to achieve longstanding United States and United Nations policy goals; and
(2) recognizes the Government of the former Yugoslav Republic of Macedonia to abstain from hostile activities and stop violating provisions of the United Nations-brokered Interim Agreement between the former Yugoslav Republic of Macedonia and Greece regarding ‘‘hostile activities or propaganda’’.

AMENDMENTS SUBMITTED AND PROPOSED
SA 1257. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table.

SA 1258. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. ADJUSTMENT OF THE AMOUNT OF THE MEDICARE PART B PREMIUM TO REWARD BENEFICIARIES WHO REFRAIN FROM TOBACCO USE.

Section 1393 of the Social Security Act (42 U.S.C. 1395r) is amended—
(1) in subsection (a)(2), by striking ‘‘and (1)’’ and inserting ‘‘(1), and (j)’’; and
(2) by adding at the end the following new subsection:

‘‘(j) With respect to the monthly premium amount under this section for months after December 2010, the Secretary shall adjust (under procedures established by the Secretary) the amount of such premium for each enrollee, as applicable, as if the individual refrains from tobacco use. Such procedures shall include providing an individual premium amount after the preceding year for a year of opportunity to have the amount of such increase for the year refunded in whole or in part if the individual demonstrates to the Secretary that the individual now refrains from tobacco use.

‘‘(2) In making the adjustments under paragraph (1) for a month, the Secretary shall ensure that the total amount of premiums to be paid under this part for the month is equal to the total amount of premiums that would have been paid under this part for the month if no such adjustments had been made, as estimated by the Secretary.’’

SA 1259. Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

‘‘(3) The Government contribution paid for each enrollee, as applicable, shall be—

(A) reduced by the dollar amount of the increase adjusted under paragraph (2)(A); or

(B) increased by the dollar amount of the reduction adjusted under paragraph (2)(B).

(4) Any adjustment under this subsection shall be subject to the limitation under subsection (b)(2).’’

(b) REGULATIONS.—The Office of Personnel Management shall prescribe regulations to carry out the amendment made by this section.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to contracts entered into under section 8902 of title 5, United States Code, that take effect with respect to costs for the plan year that begin more than 1 year after that date.

SA 1258. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in division A, insert the following:

SEC. 2. ADJUSTMENT OF THE AMOUNT OF THE MEDICARE PART B PREMIUM TO REWARD BENEFICIARIES WHO REFRAIN FROM TOBACCO USE.

Section 1393 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(2), by striking ‘‘and (1)’’ and inserting ‘‘(1), and (j)’’; and

(2) by adding at the end the following new subsection:

‘‘(j) With respect to the monthly premium amount under this section for months after December 2010, the Secretary shall adjust (under procedures established by the Secretary) the amount of such premium for each enrollee, as applicable, as if the individual refrains from tobacco use. Such procedures shall include providing an individual premium amount after the preceding year for a year of opportunity to have the amount of such increase for the year refunded in whole or in part if the individual demonstrates to the Secretary that the individual now refrains from tobacco use.

‘‘(2) In making the adjustments under paragraph (1) for a month, the Secretary shall ensure that the total amount of premiums to be paid under this part for the month is equal to the total amount of premiums that would have been paid under this part for the month if no such adjustments had been made, as estimated by the Secretary.’’

SA 1259. Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

‘‘(3) The Government contribution paid for each enrollee, as applicable, shall be—

(A) reduced by the dollar amount of the increase adjusted under paragraph (2)(A); or

(B) increased by the dollar amount of the reduction adjusted under paragraph (2)(B).

(4) Any adjustment under this subsection shall be subject to the limitation under subsection (b)(2).’’

(b) REGULATIONS.—The Office of Personnel Management shall prescribe regulations to carry out the amendment made by this section.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to contracts entered into under section 8902 of title 5, United States Code, that take effect with respect to costs for the plan year that begin more than 1 year after that date.

SA 1258. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in division A, insert the following:

SEC. 2. ADJUSTMENT OF THE AMOUNT OF THE MEDICARE PART B PREMIUM TO REWARD BENEFICIARIES WHO REFRAIN FROM TOBACCO USE.

Section 1393 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(2), by striking ‘‘and (1)’’ and inserting ‘‘(1), and (j)’’; and

(2) by adding at the end the following new subsection:

‘‘(j) With respect to the monthly premium amount under this section for months after December 2010, the Secretary shall adjust (under procedures established by the Secretary) the amount of such premium for each enrollee, as applicable, as if the individual refrains from tobacco use. Such procedures shall include providing an individual premium amount after the preceding year for a year of opportunity to have the amount of such increase for the year refunded in whole or in part if the individual demonstrates to the Secretary that the individual now refrains from tobacco use.

‘‘(2) In making the adjustments under paragraph (1) for a month, the Secretary shall ensure that the total amount of premiums to be paid under this part for the month is equal to the total amount of premiums that would have been paid under this part for the month if no such adjustments had been made, as estimated by the Secretary.’’

SA 1259. Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

‘‘(3) The Government contribution paid for each enrollee, as applicable, shall be—

(A) reduced by the dollar amount of the increase adjusted under paragraph (2)(A); or

(B) increased by the dollar amount of the reduction adjusted under paragraph (2)(B).

(4) Any adjustment under this subsection shall be subject to the limitation under subsection (b)(2).’’

(b) REGULATIONS.—The Office of Personnel Management shall prescribe regulations to carry out the amendment made by this section.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to contracts entered into under section 8902 of title 5, United States Code, that take effect with respect to costs for the plan year that begin more than 1 year after that date.
SEC. 921. ESTABLISHMENT OF TOBACCO PHASE OUT PROGRAM.

(a) In General.—The Secretary shall establish a program to require annual reductions in the sale of cigarettes.

(b) Requirement.—

(1) In general.—Under the program under subsection (a), each tobacco product manufacturer shall annually certify to the Secretary that—

(A) with respect to cigarettes made by such manufacturer, the total number of such cigarettes sold in the year for which the certification is submitted is 1 percent less than the total number of such cigarettes sold during the preceding year; or

(B) such manufacturer has purchased an additional cigarette sales allotment from another manufacturer as provided for in subsection (c).

(2) Initial certification.—With respect to the first year for which a certification is submitted by a tobacco product manufacturer, the 1 percent reduction required under paragraph (1)(A) with respect to the sale of cigarettes shall be determined using the amount of such manufacturer's cigarettes sold in the highest sales year during the preceding 5-year period (as determined by the Secretary).

(c) Additional Cigarette Sales Allotment.—

(1) In general.—A tobacco product manufacturer (referred to in this subsection as the 'contracting manufacturer') to which this section applies may enter into a contract with one or more additional manufacturers (referred to in this subsection as a 'decreased sales manufacturer') to purchase from such manufacturers an additional sales allotment.

(2) Requirement.—A contracting manufacturer to which this section applies shall—

(A) enter into a contract with a decreased sales manufacturer to provide for a further reduction in the total number of cigarettes sold during the year involved (beyond that required under subsection (b)(1)) by an amount equal to the additional sales allotment provided for in the contract; and

(B) permit the contracting manufacturer to increase the total number of cigarettes sold during the year involved by an amount equal to the additional sales allotment provided for in the contract.

(3) Additional Sales Allotment.—In this subsection, the term 'additional sales allotment' means the number of cigarettes by which the decreased sales manufacturer agrees to further reduce its sales during the year involved.

(d) Enforcement.—

(1) In general.—A tobacco product manufacturer that fails to comply with the requirement of subsection (b) for any year shall be subject to a penalty in an amount equal to $2 multiplied by the number of cigarettes by which such manufacturer has failed to comply with such subsection (b). Amounts collected under this paragraph shall be used to carry out paragraph (2).

(2) Use of amounts.—

(A) Implementation costs.—Amounts collected under paragraph (1) shall be used to reimburse the Secretary for the costs of implementing the program under this section.

(B) Tobacco use counter-advertising.—

(1) Establishment of campaign.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall carry out a campaign to counter-advertise in health respect to tobacco use. The campaign shall consist of the placement of pro-health advertising regarding tobacco use on television, radio, newspapers or magazines, on billboards, in movies, on internet sites, in public transportation, and in other media.

(3) Reporting.—The Secretary shall develop procedures for—

(A) the submission and verification of certificates required under this section; and

(B) the imposition of penalties under subsection (d)."

SA 1260. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 901(a)(2) of the Federal Food, Drug, and Cosmetic Act (as added by section 101), strike subparagraph (C).

SA 1262. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 102(a) of division A, strike paragraph (2) and insert the following:

(2) Advertising in general.—Beginning on the date that is 1 year from date of enactment of this Act, the advertisement of tobacco products, through any form of media, shall be prohibited.

SA 1263. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 900 of the Federal Food Drug, and Cosmetic Act (as added by section 101), strike paragraph (16) and insert the following:

(16) Small tobacco product manufacturer.—The term 'small tobacco product manufacturer' means a tobacco product manufacturer whose share, expressed as a percentage, of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the Federal Government, is less than 1 percent. Cigarettes sold in the United States, the District of Columbia, and Puerto Rico, by aritbitos de cigarillos collected by the Puerto Rico taxing authority,
is less than 10 percent. For purposes of calculating the share under this paragraph, 0.09 ounces of ‘roll your own’ tobacco shall constitute one individual cigarette. With respect to tobacco products other than cigarettes and does not also sell cigarettes, the term ‘small tobacco product manufacturer’ means a tobacco product manufacturer that employs fewer than 350 employees.’’

SA 1264. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 102(a)(2), insert after subparagraph (D) the following subparagraphs:

‘‘(2) strike ‘and in paragraphs (b)(2) of this section from section 897.14(b)(1), and strike section 897.14(b)(2);’’

SA 1265. Mr. ALEXANDER (for himself, Mr. VITTER, Mr. CORNYN, Mr. ISAKSON, and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. RESTRICTIONS ON TARP EXPENDITURES FOR AUTOMOBILE MANUFACTURERS; REQUIRED ISSUANCE OF COMMON STOCK TO TAXPAYERS.

(a) SHORT TITLE.—This section may be cited as the ‘‘Auto Stock for Every Taxpayer Act’’.

(b) PROHIBITION ON FURTHER TARP FUNDS.—No later than one business day after the date of enactment of this Act, the Secretary shall not provide any assistance to an automobile manufacturer.

(c) CLAIMS TO SHAREHOLDERS.—With respect to any designated automobile manufacturer, the Secretary, and the designee of the Secretary who is responsible for the exercise of shareholder voting rights with respect to a designated automobile manufacturer pursuant to assistance provided under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), or any other provision of law, the Secretary may not expend or obligate any funds made available under that Act on or after the date of enactment of this Act with respect to any designated automobile manufacturer.

(d) REQUIRED ISSUANCE OF COMMON STOCK TO ELIGIBLE TAXPAYERS.—Not later than 1 year after the emergence of any designated automobile manufacturer from bankruptcy protection described in subsection (c)(1)(B), the Secretary shall issue a certificate of common stock, which shall represent such taxpayer’s share of the aggregate common stock holdings of the United States Government in the designated automobile manufacturer on such date.

(e) CIVIL ACTIONS AUTHORIZED.—A person who is aggrieved of a violation of the fiduciary duty established under subsection (c), may bring a civil action in an appropriate United States district court to obtain injunctive or other equitable relief relating to the violation.

(f) APPLICATION TO ACQUISITIONS.—As used in this section—

(1) the term ‘‘designated automobile manufacturer’’ means an entity organized under the laws of a State, the primary business of which is the manufacture of automobiles, and any affiliate thereof, if such automobile manufacturer—

(A) has received funds under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), or funds were obligated under that Act, before the date of enactment of this Act; and

(B) has filed for bankruptcy protection under chapter 11 of title 11, United States Code, during the 90-day period preceding the date of enactment of this Act;

(2) the term ‘‘eligible taxpayer’’ means any individual taxpayer who filed a Federal taxable return for taxable year 2008 (including any joint return) not later than the due date for such return (including any extension);

(3) the term ‘‘Secretary’’ means the Secretary of the Treasury or the designee of the Secretary; and

(4) the terms ‘‘director’’, ‘‘issuer’’, ‘‘securities’’, and ‘‘securities laws’’ have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78).

SA 1266. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 3. HEALTHY BEHAVIOR INCENTIVE PROGRAMS.

(a) MEDICAID STATE PLAN AMENDMENT.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) by redesignating subparagraphs (D) through (L) as subparagraphs (E) through (M), respectively; and

(2) by inserting after subparagraph (C) the following new subparagraph:

‘‘(D) Section 1902(a)(74) (relating to an incentive program for the reduction or elimination of the use of tobacco products).’’.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 2009.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX or a State child health plan under title XIX of the Social Security Act, which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of this title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the date of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SA 1267. Mr. CHAMBLISS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service...
June 4, 2009

CONGRESSIONAL RECORD — SENATE

SA 1268. Mr. CHAMBLISS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 907 of the Federal Food, Drug, and Cosmetic Act (as added by section 101(b)(4)(B) of title I of division A), add the following:

“(f) PESTICIDES.—Nothing in this section affects the authority of the Administrator of the Environmental Protection Agency to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).”.

SA 1269. Mr. BAYH (for himself, Ms. MURkowski, Mr. BURRIS, Mr. LIEBERMAN, Mr. WARNER, Mr. WEBB, Mr. NELSON of Nebraska, and Mr. BEGICH) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the chapter IX of the Federal Food, Drug, and Cosmetic Act (as added by section 101(b)(4)(B) of title I of division A), add the following:

“SEC. 920. PESTICIDES.

“Nothing in this chapter affects the authority of the Administrator of the Environmental Protection Agency to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).”.

SA 1269. Mr. BAYH (for himself, Ms. MURkowski, Mr. BURRIS, Mr. LIEBERMAN, Mr. WARNER, Mr. WEBB, Mr. NELSON of Nebraska, and Mr. BEGICH) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

DIVISION —NURSE FACULTY LOAN REPAYMENT PROGRAM

SEC. 1. SHORT TITLE.

This division may be cited as the ‘‘Nurses’ Higher Education and Loan Repayment Act of 2009’’.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The shortage of registered nurses nationwide and projects the shortage will grow to more than 1,000,000 nurses by 2020, 36 percent less than needed to meet demands for nursing care.

(2) The shortage of qualified nursing faculty is a primary factor driving the inability of nursing schools to graduate more registered nurses to meet the Nation’s growing workforce demand.

(3) The Department of Health and Human Services estimates that 88,000 qualified applications, or 1 out of every 3 submitted to basic registered nurse programs in 2006, were rejected due to lack of capacity.

(4) The American Association of Colleges of Nursing (in this section referred to as the ‘‘AACN’’) estimates that 49,948 applicants were turned away specifically from baccalaureate and graduate nursing in 2008 and over 70 percent of the schools responding to the AACN survey reported a lack of nurse faculty as the number 1 reason for turning away qualified applicants.

(5) Large numbers of faculty members at schools of nursing in the United States are nearing retirement. According to the AACN, the average age of a nurse faculty member is 55 years old and the average age at retirement is 62.

(6) The current nationwide faculty vacancy rate is estimated to be as high as 7.6 percent, including 814 vacant positions at schools of nursing accredited as baccalaureate and advanced degrees and, in 2006, as many as 880 in associate degree programs.

(7) Market incentives discentives for individuals qualified to become nurse educators from pursing this career. The average annual salary for an associate professor with a master’s degree is nearly 20 percent less than the average salary for a nurse practitioner with a master’s degree, according to the 2007 salary survey by the Journal ADVANCE for Nurse Practitioners.

(8) The most recent Health Resources and Services Administration survey data indicate that there are currently 12,000 full and part-time nurse educators from pursing this career. The average annual salary for an associate professor with a master’s degree is nearly 20 percent less than the average salary for a nurse practitioner with a master’s degree, according to the 2007 salary survey by the Journal ADVANCE for Nurse Practitioners.

(9) Current Federal incentive programs to encourage nurses to become educators are inadequate and inaccessible for many interested nurses.

(10) A broad incentive program must be made available to willing and qualified nurses that will provide financial support and encourage nurses toward teaching.

(11) A broad incentive program must be available to willing and qualified nurses that will provide financial support and encourage them to pursue and maintain a career in nursing education.

SEC. 3. NURSE FACULTY LOAN REPAYMENT PROGRAM.

Part E of title VIII of the Public Health Service Act (42 U.S.C. 279A et seq.) is amended by inserting after section 846A the following:

“SEC. 846B. NURSE FACULTY LOAN REPAYMENT PROGRAM.

“(a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with eligible individuals for the repayment of education loans, in accordance with this section, to increase the number of qualified nursing faculty.

“(b) AGREEMENTS.—Each agreement entered into under subsection (a) shall require that the eligible individual shall serve as a full-time faculty member of an accredited school of nursing for a period of time, the aggregate of which is not less than 3 years and shall provide for the Secretary to recover under such agreement any amount that the Federal Government is entitled to recover under such agreement if compliance by the individual with the agreement involved is impossible or would involve extreme hardship to the individual or if enforcement of the agreement with respect to the individual would be unconscionable.

“(c) AGREEMENT PROVISIONS.—Agreements entered into pursuant to subsection (a) shall be entered into on such terms and conditions as the Secretary may determine, except that—

“(1) not more than 360 days after the date on which the 6-year period described in subsection (b) begins, but in no case before the individual starts as a full-time member of the faculty of an accredited school of nursing, the individual may make payments, and on behalf of that individual, on the outstanding principal of, and interest on, any loan the individual obtained to pay for such educational expenses;

“(2) for an individual who has completed a master’s degree in nursing—

“(A) payments may not exceed $30,000 per calendar year; and

“(B) total payments may not exceed $80,000; and

“(3) for an individual who has completed a doctorate degree in nursing—

“(A) payments may not exceed $30,000 per calendar year; and

“(B) total payments may not exceed $80,000;

“(d) WAIVER OR SUSPENSION OF LIABILITY.—In the case of an individual making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of any liability under this section if compliance by the individual with the agreement involved is impossible or would involve extreme hardship to the individual or if enforcement of the agreement with respect to the individual would be unconscionable.

“(e) DATE CERTAIN FOR RECOVERY.—Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

“(f) AVAILABILITY.—Amounts recovered under paragraph (1) shall be available to the Secretary for making loan repayments under this section and shall remain available for such purpose until expended.

“(g) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this section, the term ‘eligible individual’ means an individual who—

“(1) is a United States citizen, national, or lawful permanent resident;

“(2) holds an unencumbered license as a registered nurse; and

“(3) has either already completed a master’s or doctorate nursing program at an accredited school of nursing or is currently enrolled on a full-time or part-time basis in such a program.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as necessary for each of fiscal years 2010 through 2014 to carry out this Act. Such sums shall remain available until expended.

“(i) TERMINATION.—The provisions of this section shall terminate on December 31, 2020.”.

SA 1270. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain
authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 11. REIMBURSEMENT OF AUTOMOBILE DISTRIBUTORS.

(a) In General.—Notwithstanding any other provision of law, any funds provided by the United States Government, or any agency, department, or subdivision thereof, to an automobile manufacturer or a distributor thereof as credit, loans, financing, advances, or by any other means, with such automobile manufacturer’s or distributor’s proceeding as a debtor under title 11, United States Code, shall be conditioned upon use of such funds to fully reimburse all dealers of such automobile manufacturer or manufacturer’s distributor for—

(1) the cost incurred by such dealers in acquiring and inventorying the dealer’s possession as of the date on which the proceeding under title 11, United States Code, by or against the automobile manufacturer or manufacturer’s distributor is commenced, on the same basis as if the dealers were terminating pursuant to existing franchise agreements or dealer agreements; and

(2) any other provision of law, any funds provided by such automobile manufacturer or manufacturer’s distributor under any other agreement between an automobile manufacturer or manufacturer’s distributor and the federal Government (or any agency, department, or subdivision thereof) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise (regardless of whether the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided) between a port or place and a port or place in the United States.

(b) Inclusion in Terms.—Any note, security agreement, loan agreement, or other agreement between an automobile manufacturer or manufacturer’s distributor and the Government (or any agency, department, or subdivision thereof) shall expressly provide for the use of such funds as required by this section.

(c) Effectiveness of Rejection.—Notwithstanding any other provision of law, any rejection by an automobile manufacturer or manufacturer’s distributor that a debtor in a proceeding under title 11, United States Code, of a franchise agreement or dealer agreement pursuant to section 366 of title 11, United States Code, unless the credit agreement or agreements expressly provided for the use of funds as required by this section.

(d) Effectiveness of Rejection.—Notwithstanding any other provision of law, any rejection by an automobile manufacturer or manufacturer’s distributor that a debtor in a proceeding under title 11, United States Code, of a franchise agreement or dealer agreement pursuant to section 366 of title 11, United States Code, shall not be effective until at least 180 days after the date on which such rejection is otherwise approved by a bankruptcy court.

SA 1271. Mr. KOHL (for himself, Ms. SNOWE, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed by Chilt to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of division A, add the following:

TITLE I—PREVENT ALL CIGARETTE TRAFFICKING ACT

SEC. 101. SHORT TITLE; PURPOSES.

(a) SHORT TITLE.—This title may be cited as the “Prevent All Cigarette Trafficking Act of 2009” or “FACT Act.”

(b) PURPOSES.—It is the purpose of this title to—

(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to mail-order tobacco retailers;

(2) for one or more Indian tribes.

(3) federal, state, and local excise taxes on cigarettes and smokeless tobacco;

(4) while making sales to a consumer who is one of the latter’s customers as defined in section 1151 of title 18, United States Code, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco were delivered.

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of the Jenkins Act (U.S.C. 376) is amended—

(1) by striking “cigarettes” each place it appears and inserting “cigarettes or smokeless tobacco”;

(2) in subsection (a)—

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

(i) by inserting “CONTENTS.—” after “(a)”;

(ii) by striking “or transfers” and inserting “, transfers, or ships”;

(B) in paragraph (1)—

(i) by striking “with the tobacco tax administrator of the State” and inserting “with the Attorney General of the United States and with the tobacco tax administrator of the State and with the tobacco tax administration of the State”;

(ii) by striking “; and” and inserting the following: “, as well as telephone numbers
for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service of process on behalf of the person;’’;

(C) in paragraph (2), by striking ‘‘and the quantity thereof.’’ and inserting ‘‘the quantity thereof, and the name, address, and telephone number of the person through whom the shipment to the recipient on behalf of the delivery seller, with all invoice or memorandum information relating to specific customers to be organized by city or town and by zip code;’’; and

(D) by adding at the end the following:

‘‘(3) with respect to each memorandum or invoice issued under paragraph (2), also file copies of the memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.’’;

(i) by inserting ‘‘PRESUMPTIVE EVIDENCE.——’’ after ‘‘(b);’’;

(ii) by striking ‘‘(1)’’ and inserting ‘‘that’’;

(C) by striking ‘‘(2)’’ and ‘‘(2)’’ and all that follows and inserting a period; and

(D) by adding at the end the following:

‘‘(c) REQUIREMENTS FOR DELIVERY SALES.—The Administrator shall be treated as nondeliverable

The amendment made by inserting after section 2 the following:

‘‘SEC. 2A. DELIVERY SALES.

‘‘(a) IN GENERAL.—With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

‘‘(1) the shipping requirements set forth in subsection (b);

‘‘(2) common recordkeeping requirements set forth in subsection (c);

‘‘(3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco that the delivery seller occurred entirely within the specific State and place, including laws imposing—

(A) excise taxes;

(B) licensing and tax-stamping requirements;

(C) restrictions on sales to minors; and

(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

‘‘(4) the tax collection requirements set forth in subsection (a) described in paragraph (A);

‘‘(b) SHIPPING AND PACKAGING.—

‘‘(1) REQUIRED STATEMENT.—For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows:

‘‘CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, LICENSES, AND FEES WHICHEVER APPLICABLE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS.‘‘

‘‘(2) FAILURE TO LABEL.—Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable

matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco, and shall keep confidential any personal information that the delivery seller complies with the requirement.

‘‘(2) RECORD RETENTION.—Records of a delivery seller who mails or ships tobacco products—

(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

(ii) shall use a method of mailing or shipping that requires—

(I) the purchaser to receive the delivery sale order, or an agent who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept the tobacco product container at the delivery address; and

(ii) the person who signs to accept delivery of the tobacco product container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

and

(iii) shall not accept a delivery sale order from a person without—

(I) obtaining the full name, birth date, and residential address of that person; and

(ii) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government agencies regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

‘‘(2) EXCEPTION.—Paragraph (1) does not apply to a delivery sale of cigarettes or smokeless tobacco if the law of the State or local government of the place where the tobacco product is to be delivered requires or otherwise provides that evidence that the excise tax has been paid is provided to the consumer or remitted by the delivery seller complies with the requirement.

‘‘(d) LIST OF UNAUTHORIZED OR NONCOMPLIANT DELIVERY SELLERS.—

‘‘(1) IN GENERAL.—

(A) INITIAL LIST.—Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General of the United States shall compile a list of delivery sellers who deliver cigarettes or smokeless tobacco, or who have not registered with the Attorney General of the United States pursuant to section 2(a), or that are otherwise not in compliance with this Act, and

‘‘(i) distribute the list to—

(I) the attorney general and tax administrator of every State;

(ii) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

(iii) any other person that the Attorney General of the United States determines can promote the effective enforcement of this Act; and

(b) PUBLICATION.—The Attorney General of the United States shall make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco to any consumer in any State.

‘‘(2) CONTENTS.—The Attorney General of the United States shall include, for each delivery seller on the list, the following:

‘‘(i) the address, including the city or town and by zip code, into which the delivery sale order is sent, the name, address, and phone number of the delivery seller; and

(ii) any other information that the Attorney General of the United States requires.

‘‘(3) DETERMINATION.—The Attorney General of the United States shall compile the list, by State, and maintain the list, including any updates, on a State-by-State basis.

‘‘(3) RECORD RETENTION.—Records of a delivery seller shall be kept as described in paragraph (1) until the end of the 4th full calendar year that begins after the date of the delivery sale.

‘‘(4) ACCESS FOR OFFICIALS.—Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply local or tribal tobacco taxes, to the attorneys general of the States, to the chief law enforcement officers of the local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

‘‘(4) DELIVERY.—

‘‘(1) IN GENERAL.—Except as provided in paragraph (2), no delivery seller may sell or deliver any cigarette or smokeless tobacco to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are sold shall have been paid to the State;

(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and

(C) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

‘‘(2) EXCEPTION.—Paragraph (1) does not apply to a delivery sale of cigarettes or smokeless tobacco if the law of the State or local government of the place where the tobacco product is to be delivered requires or otherwise provides that evidence that the excise tax has been paid is provided to the consumer or remitted by the excise tax to the State or local government, and the delivery seller complies with the requirement.

‘‘(5) RECORDS.—

(A) IN GENERAL.—

(A) INITIAL LIST.—Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General of the United States shall compile a list of delivery sellers who deliver cigarettes or smokeless tobacco, or who have not registered with the Attorney General of the United States pursuant to section 2(a), or that are otherwise not in compliance with this Act, and

‘‘(i) distribute the list to—

(I) the attorney general and tax administrator of every State;

(ii) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

(iii) any other person that the Attorney General of the United States determines can promote the effective enforcement of this Act; and

(b) PUBLICATION.—The Attorney General of the United States shall make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco to any consumer in any State.

‘‘(2) CONTENTS.—The Attorney General of the United States shall include, for each delivery seller on the list, the following:

‘‘(i) the address, including the city or town and by zip code, into which the delivery sale order is sent, the name, address, and phone number of the delivery seller; and

(ii) any other information that the Attorney General of the United States requires.
mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States updates—

‘‘(D) STATE, LOCAL, OR TRIBAL ADDITIONS.—The Attorney General of the United States shall include in the list described in subparagraph (A) any deliveries of cigarettes or smokeless tobacco to consumers identified by any government under paragraph (6), and shall distribute the list to the attorney general or chief law enforcement official of any government submitting any such information, and to any common carriers operating Internet or mail-order sellers who deliver small packages to consumers identified by any government pursuant to paragraph (6).’’

‘‘(E) ACCURACY AND COMPLETENESS OF LIST OF NONCOMPLYING DELIVERY SELLERS.—In preparing and revising the list described in subparagraph (A), the Attorney General of the United States shall—

‘‘(i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that a delivery seller has violated subparagraph (D) or (E) of paragraph (1);

‘‘(ii) not later than 14 days before including a delivery seller on the list, make a reasonable attempt to send notice to the delivery seller by electronic mail, or other means that means the delivery seller is being placed on the list, which shall cite the relevant provision of this Act and the specific reason for which the delivery seller is being placed on the list;

‘‘(iii) provide an opportunity to the delivery seller to challenge placement on the list;

‘‘(iv) investigate each challenge described in clause (iii) by contacting the relevant Federal, State, tribal, and local law enforcement officials and the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made; and

‘‘(v) if the Attorney General of the United States determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, promptly remove the delivery seller from the list as appropriate and notify each appropriate Federal, State, tribal, and local authority of the determination.’’

‘‘(F) RECORDS.—A common carrier or other delivery service obtaining personal information from a delivery seller on the list is prohibited from--

‘‘(i) using the information for purposes other than enforcement, or--

‘‘(II) any other active agreement between a delivery seller and another party that restricts delivery sales that are required to be performed by a delivery seller to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and

‘‘(ii) if a settlement agreement described in subparagraph (I) is a settlement agreement relating to delivery sales that restricts delivery sales that are required to be performed by a delivery seller to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and

‘‘(iii) other any active agreement between a common carrier and a State that operates through States to ensure that no deliveries of cigarettes or smokeless tobacco to consumers shall not be made to minors or otherwise pay--

‘‘(1) SHIPMENTS FROM PERSONS ON LIST.—

‘‘(A) IN GENERAL.—Subsection (b)(2) and (3) of title 19, United States Code, shall not apply to a common carrier or other delivery service, for cigarettes or other tobacco products or small packages to consumers identified by any government under paragraph (6), and shall distribute the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers identified by any government pursuant to paragraph (6), and shall dis--

‘‘(B) IMPLEMENTATION OF UPDATES.—Commencing on the date that is 30 days after the date of the distribution or availability of any modification to the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers maintained and distributed by any entity authorized by the Attorney General of the United States to block illegal deliveries of cigarettes or smokeless tobacco to consumers shall not be obligated to pay--

‘‘(i) the person ordering the delivery shall be obligated to pay—

‘‘(II) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains any item other than cigarettes or smokeless tobacco;

‘‘(ii) if the package is determined not to be--

‘‘(III) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover any extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery order; and

‘‘(III) if the package is not deliverable, the common carrier or other delivery order to provide the packaging and its contents to a Federal, State, or local law enforcement agency.

‘‘(B) RECORDS.—A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any delivery interrupted under this paragraph and provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

‘‘(C) CONFIDENTIALITY.—Any person receiving records under subparagraph (B) shall—

‘‘(i) use the records solely for the purposes of enforcing this Act or the collection of any taxes owed on related sales of cigarettes and smokeless tobacco to consumers identified by any government pursuant to paragraph (6), and shall dis--

‘‘(ii) keep confidential any personal information in the records not otherwise required for such purposes.

‘‘(D) PREEMPTION.—

‘‘(A) IN GENERAL.—No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

‘‘(i) requiring that the common carrier or other delivery service verify the identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

‘‘(ii) requiring that the common carrier or other delivery service verify that the identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

‘‘(iii) requiring that the common carrier or other delivery service verify that the identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;
“(ii) Exemptions.—No State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residencies without proof that the common carrier is not exempt under paragraph (3) of this subsection.

“(A) State, Local, and Tribal Additions.—

“(1) A State, local, or tribal government shall provide the Attorney General of the United States with—

“(i) all known names, addresses, website addresses, and any other primary contact information of any delivery seller that—

“(I) offers for sale or makes sales of cigarettes or smokeless tobacco; or

“(II) has failed to register with or make reports to the respective tax administrator as required by this Act, or that has been found in a legal proceeding to have otherwise failed to comply with this Act; and

“(ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

“(B) Updates.—Any government providing a list to the Attorney General of the United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list described in paragraph (1)(A).

“(C) Requiring Withdrawal.—Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list described in paragraph (1)(A) any persons that are on the list solely because of the posting or other action of the Government of the United States of noncomplying delivery sellers of cigarettes or smokeless tobacco or a subsequent update or correction by the government.

“(7) Deadline to Incorporate Additions.—

“The Attorney General of the United States shall—

“(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (6) in any list or update that is distributed or made available under paragraph (1) or on or after the date that is 30 days after the date on which the information is received by the Attorney General of the United States; and

“(B) distribute any list or update described in subparagraph (A) to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (6).

“(8) Notice to Delivery Sellers.—

“Not later than 14 days before including any delivery seller on the initial list described in paragraph (1)(A), or on an update to the list for the first time, the Attorney General of the United States shall make a reasonable effort to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list, or update, with that notice citing the relevant provisions of this Act.

“(9) Limitations.—

“(A) In General.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

“(i) determine whether any list distribution or other update required under paragraph (1) is complete, accurate, or up-to-date;

“(ii) determine whether a person ordering a delivery is in compliance with this Act; or

“(iii) pursuant to paragraph (1) or (2), make any determination whether any package being delivered to determine its contents.

“(B) Alternate Names.—Any common carrier or other person making a delivery subject to this subsection—

“(i) shall not be required to make any inquiry as to the identity of a person ordering a delivery; and

“(ii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who is using a different name or address in order to evade the related delivery restrictions; and

“(iii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who is using a different name or address in order to evade the delivery restrictions of paragraph (2).

“(C) Penalties.—Any common carrier or person transporting packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49, United States Code, or any other provision of law for—

“(i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list described in paragraph (1)(A); and

“(ii) refusing to follow any acceptable practice or procedure, to make any deliveries, or any deliveries in certain States, of cigarettes or smokeless tobacco for any person on the list described in paragraph (1)(A) who the common carrier or other delivery service knows is a delivery seller who is on the list and is using a different name or address to evade the delivery restrictions of paragraph (2).

“(D) Other Limitations.—No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed intentionally—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“Other Limitations.—

“(E) Enforcement.—The Jenkins Act is amended by striking section 4 and inserting the following:

“SEC. 4. ENFORCEMENT.

“(a) In General.—The United States district courts shall have jurisdiction to prevent and restrain violations of this Act and to provide other appropriate injunctive or equitable relief, including money damages, for the violations.

“(b) Authority of the Attorney General.—The Attorney General of the United States shall administer and enforce this Act.

“(c) State, Local, and Tribal Enforcement.—

“(1) In General.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer, may bring an action in any United States district court to prevent and restrain violations of this Act by any person or to obtain any other appropriate relief from any person for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

“(2) Provision of Information.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief enforcement officer, may bring an action in any United States district court to prevent and restrain violations of this Act by any person or to obtain any other appropriate relief from any person for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.
law enforcement officer, may provide evidence of a violation of this Act by any person not subject to State, local, or tribal government enforcement actions for violations of any Act of the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce this Act.

"(B) ALLOCATION OF FUNDS.—Of the amount available to the Attorney General of the United States for purposes of enforcing this Act and other laws relating to contraband tobacco products.

"(B) ALLOCATION OF FUNDS.—Of the amount available to the Attorney General of the United States under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

"(C) DEFINITION.—In this paragraph, the term "tribal court proceedings" means a proceeding in State court, or take other enforcement actions, on the basis of an alleged violation of State or local law.

"(D) LOCAL GOVERNMENT ENFORCEMENT.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

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"(D) PERSONS DEALING IN TOBACCO PRODUCTS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

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"(e) NOTICE.—

"(e) NOTICE.—(A) IN GENERAL.—The remedies available under this section and section 3 are in addition to any other remedies available under Federal, Indian tribal, or other law.

"(f) PERSONS DEALING IN TOBACCO PRODUCTS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

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States Postal Service shall deliver the package only to a recipient who is verified not to be a minor at the recipient address or transfer it for delivery to an Air/Army Postal Office or a legally operating cigarette manufacturer designated in the recipient address; and
(VII) that no person may initiate more than 10 mailings described in subparagraph (A) during a period.

(C) DEFINITION.—In this paragraph, the term ‘minor’ means an individual who is less than the minimum age required for the legal sale of tobacco products as determined by applicable law at the place the individual is located.

(5) Mailing of products for consumer testing by manufacturers.—

(A) In general.—Subject to subparagraph (B), subsection (a) shall not preclude a legally operating cigarette manufacturer from mailing to a legally authorized agent of the manufacturer a sample of cigarettes as required by law; and
(B) Limitations.—Subparagraph (A) shall not—

(1) permit a mailing of cigarettes to an individual located in any State that prohibits the delivery of cigarettes to individuals in the State, or preempt, limit, or otherwise affect any related State laws; or
(2) authorize a manufacturer, directly or through a legally authorized agent, to mail cigarettes in any calendar year in a total amount greater than 1 percent of the total cigarettes manufactured in the United States during the calendar year before the date of the mailing.

(C) RULES.—

(1) In general.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which establishes the standards and requirements that apply to all mailings described in subparagraph (A).
(2) CONTENTS.—The final rule issued under clause (1) shall require—

(I) the United States Postal Service to verify that any person submitting a tobacco product into the mails under this paragraph is a legally operating cigarette manufacturer that is a legally authorized agent of the manufacturer submitting the cigarettes into the mails on behalf of the manufacturer;
(II) the legally operating cigarette manufacturer submitting the cigarettes into the mails to afford the legally authorized agent of the manufacturer has verified that the recipient is an adult established smoker;
(bb) the recipient has not made any payment for the cigarettes;
(cc) the recipient has signed a written statement that is in effect indicating that the recipient wishes to receive the mailings; and
(dd) the manufacturer or the legally authorized agent of the manufacturer has offered the opportunity for the recipient to withdraw the written statement described in item (cc) of this subparagraph and to do so not less frequently than once in every 3-month period;
(III) the legally operating cigarette manufacturer or the legally authorized agent of the manufacturer, prior to mailing the cigarettes into the mails under this paragraph to affirm that any package mailed under this paragraph contains not more than 12 packs of cigarettes (240 cigarettes) on which all taxes levied on the cigarettes by the State or locality of delivery have been paid and all related State tax stamps or other tax-payment indicia have been applied;
(IV) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;
(V) the United States Postal Service to maintain records relating to a mailing described in subparagraph (A) which records shall be kept for a period of 3 years beginning on the date of the mailing and make the information available to persons enforcing this section;
(VI) that any mailing described in subparagraph (A) shall be marked with a United States Postal Service label or marking that makes it clear to employees of the United States Postal Service that it is a permitted mailing of otherwise nonmailable tobacco products that may be delivered only to the named recipient after verifying that the recipient is an adult; and
(VII) the United States Postal Service shall deliver a mailing described in subparagraph (A) only to the named recipient and only after verifying that the recipient is an adult.

(D) Definitions.—In this paragraph—

(i) the term ‘adult’ means an individual who is at least 21 years of age; and
(ii) the term ‘consumer testing’ means testing limited to formal data collection and analysis for the purpose of evaluating the product for quality assurance and benchmarking purposes of cigarette brands or sub-brands among existing adult smokers.

(E) Federal Government Agencies.—An agency that is involved in the consumer testing of tobacco products solely for public health purposes may mail cigarettes under the same requirements, restrictions, and rules and procedures that apply to consumer testing mailings of cigarettes by manufacturers under paragraph (5), except that the agency shall not be required to pay the recipients for participating in the consumer testing.

(F) Seizure and Forfeiture.—Any cigarettes or smokeless tobacco made nonmailable by this subsection that are deposited in the mails shall be subject to seizure and forfeiture, pursuant to the procedures set forth in chapter 46 of this title. Any tobacco product that is forfeited under this subsection shall be destroyed or retained by the Federal Government for the detection or prosecution of crimes or related investigations.

(G) Additional Penalties.—In addition to any other fines and penalties under this title for violations of this section, any person who is subject to an additional civil penalty in the amount equal to 10 times the retail value of the nonmailable cigarettes or smokeless tobacco, including all Federal, State, and local taxes.

(H) Criminal penalties.—Whoever knowingly deposits for mailing or delivery, or causes or permits the mailing, according to the direction thereof, or at any place at which it is directed to be delivered by a person to whom anything that is nonmailable under this section shall be fined under this title, imprisoned not more than 1 year, or both.

(I) Use of penalties.—The Postal Service shall establish a separate account in the Treasury, to be known as the ‘PACT Postal Service Fund’. Notwithstanding any other provision of law, any amount equal to any criminal fines, civil penalties, or other monetary penalties collected by the Federal Government in enforcing this section shall be deposited in the PACT Postal Service Fund and shall be available to the Postmaster General for the purpose of enforcing this subsection.

(J) Coordination of Efforts.—The Postmaster General shall cooperate and coordinate efforts to enforce this section with related enforcement activities of any other agency or office of the Federal Government, State, local, or tribal government, whenever appropriate.

(K) Actions by State, Local, or Tribal Governments Relating to Certain Tobacco Products.—

(1) In general.—A State, through its attorney general, or a local government or Indian tribe, may in a civil action in a United States district court obtain appropriate relief with respect to a violation of this section. Appropriate relief includes injunctive and equitable relief and damages equal to the amount of unpaid taxes on tobacco products mailed in violation of this section to addresses in that State, locality, or tribal land.

(2) Sovereign immunity.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any uncontroverted lawsuit under Federal, State, local, or tribal law.

(L) Attorney General referral.—A State, through its attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer, may in a civil action in a United States district court obtain appropriate relief with respect to a violation of this section. Appropriate relief includes injunctive and equitable relief and damages equal to the amount of unpaid taxes on tobacco products mailed to addresses in that State, locality, or tribal land.

(M) Nonexclusive of Remedies.—The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, tribal, or other law. Nothing in this subsection shall be construed to expand, restrict, or modify any right of an authorized State, local, or tribal government official to proceed in a State, tribal, or other appropriate court, or take other enforcement actions, on the basis of an alleged violation of State, local, tribal, or other law.

(N) Enforcement actions.—Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of the State.

(O) DEFINITION.—In this section, the term ‘State’ has the meaning given that term in section 1716(k).

(P) Clerical amendment.—The table of sections for chapter 83 of title 18 is amended
by inserting after the item relating to section 1716D the following:

"1716E. Tobacco products as nonmailable."

SEC. 04. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO MERCHANTS, CIVIL PENALTY. 
Section 2343(c) of title 18, United States Code, is amended to read as follows:

``(c)(1) Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives engaging in business operations during normal business hours, enter the premises of any person described in subsection (a) or (b) for the purposes of inspecting—

(A) any records or information required to be maintained by the person under this chapter; or
(B) any cigarettes or smokeless tobacco kept or stored by the person at the premises.

(2) The district courts of the United States shall have the authority to issue a civil action under this subsection to compel inspections authorized by paragraph (1).

(3) Whoever denies access to an officer under paragraph (1), or who fails to comply with an order issued under paragraph (2), shall be subject to a civil penalty in an amount not to exceed $10,000.

SEC. 05. REQUIREMENTS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.

(a) IN GENERAL.—Nothing in this title or the amendments made by this title shall be construed to amend, modify, or otherwise affect—

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c-1 et seq.));

(2) any agreements, compacts, or other intergovernmental arrangements between any Federal agency and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c-1 et seq.));

(3) any limitations under Federal or State law, including Federal common law and treaties, on State, local, and tribal tax and regulatory jurisdiction relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian country;

(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; or

(5) any State or local government authority to bring enforcement actions against persons located in Indian country.

(b) LAW ENFORCEMENT.—Nothing in this title or the amendments made by this title shall be construed to inhibit or otherwise affect any coordinated law enforcement agreement between 2 or more States or other jurisdictions, including Indian tribes, through interstate compact or otherwise, that—

(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

(3) establishes cooperative programs for the administration of such laws;

(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Nothing in this title or the amendments made by this title shall be construed to authorize, deprive, or commission States or local governments as instrumentalties of the United States.

SEC. 06. ENHANCED CONTRABAND TOBACCO ENFORCEMENT.

(a) REQUIREMENTS.—The Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall—

(1) not later than the end of the 3-year period beginning on the effective date of this title, create a regional contraband tobacco trafficking team for each of New York, New Jersey, the District of Columbia, Ohio, Michigan, Los Angeles, California, Seattle, Washington, and Miami, Florida;

(2) create a Tobacco Intelligence Center to oversee investigations and monitor and coordinate ongoing investigations and to serve as the coordinating center for all ongoing tobacco diversion investigations within the Bureau of Alcohol, Tobacco, Firearms, and Explosives, in the United States and, where applicable, with law enforcement organizations around the world;

(3) establish a covert national warehouse for undercover operations; and

(4) create a computer database that will track and analyze information from retail smokers of tobacco products that sell through the Internet or by mail order or make other non-face-to-face sales.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a) $8,500,000 for each of fiscal years 2010 through 2012.

SEC. 07. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall take effect on the date that is 90 days after the date of enactment of this Act.

(b) BATFE AUTHORITY.—The amendments made by section 04 of this title shall take effect on the date of enactment of this Act.

SEC. 08. SEVERABILITY.

If any provision of this title, or any amendment made by this title, or the application thereof to any person or circumstance, is held invalid or otherwise found to be inconsistent with the title or the application of the title to any other person or circumstance shall not be affected thereby.

SEC. 09. SENATE RESOLUTION CONCERNING THE PRECEDENTIAL EFFECT OF THIS TITLE.

It is the sense of Congress that unique harms are posed by online cigarette sales, including problems with verifying the ages of consumers in the digital market and the long-term health problems associated with the use of tobacco products. This title was enacted recognizing the long-standing interest of Congress in ensuring compliance with States’ laws regulating remote sales, including preventing sales to citizens of those States, including the passage of the Jenkins Act over 50 years ago, which established reporting requirements for out-of-State companies that sell certain tobacco products to citizens of the taxing States, and which gave authority to the Department of Justice to enforce those laws.

SA 1272. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employee Thrift Savings Plan, and for other purposes: which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 500. LABELING CHANGES. 
Section 905(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(k)) is amended by adding at the end the following:

``(ll) the product that is the subject of an application under this subsection is different from the labeling of the listed drug at the time of approval of the application under this subsection, the drug that is the subject of such application shall, notwithstanding any other provision of this Act, be eligible for approval and shall not be considered misbranded under section 502 if—

(A) a revision to the labeling of the listed drug has been approved by the Secretary within 60 days of the expiration of the patent or exclusivity period and the revision prohibited the approval of the drug under this subsection;

(B) the Secretary has not determined the language of the application that is the subject of the application under this subsection at the time of expiration of such patent or exclusivity period;

(C) the labeling revision described under subparagraph (A) does not include a change to the ‘‘Warnings’’ section of the labeling; and

(D) the Secretary does not deem that the absence of such revision to the labeling of the drug that is the subject of the application under this subsection would adversely impact the safe use of the drug.

The sponsor of the application under this subsection agrees to revise the labeling of the drug that is the subject of such application not later than 60 days after the notification of any changes to such labeling required by the Secretary; and

(F) such application otherwise meets the applicable requirements for approval under this subsection.’’

SA 1273. Mr. WEBB submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code,
to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE — AUTOMOBILE VOUCHER PROGRAM

SEC. 01. AUTOMOBILE VOUCHER PROGRAM.

(a) ESTABLISHMENT.—There is established in the Department of Transportation a voluntary program to be known as the ‘‘Automobile Voucher Program’’ through which the Secretary, in accordance with this section and the regulations promulgated under subsection (d), shall—

(1) authorize the issuance of an electronic voucher, subject to the specifications set forth in subsection (c), to offset the purchase price or lease price for a qualifying lease of an automobile manufactured after model year 2006, upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program;

(2) certify dealers for participation in the Program; and

(3) in consultation with the Secretary of the Treasury, make electronic payments to dealers for vouchers accepted by such dealers, in accordance with the regulations promulgated under subsection (d);

(b) Q UALIFICATIONS FOR AND VALUE OF VOUCHERS.—

(1) ELIGIBLE TRADE-IN VEHICLES.—A $1,000 voucher shall be issued under the Program to offset the purchase price or lease price of a new automobile, upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program.

(2) USED AUTOMOBILES.—A $3,000 voucher shall be issued under the Program to offset the purchase price or lease price of a used automobile manufactured after model year 2006, upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program.

(c) PROGRAM SPECIFICATIONS.—

(1) LIMITATIONS.—

(A) GENERAL PERIOD OF ELIGIBILITY.—A voucher issued under the Program shall be used only for the purchase or qualifying lease of automobiles manufactured after model year 2006 that occur between—

(i) March 30, 2009, and June 30, 2009;

(ii) aggregate information regarding the number of all automobile manufactured after model year 2006, which have been purchased or leased under the Program;

(iii) the location of sale or lease; and

(iv) an estimate of the annual economic and employment effects of the Program.

(b) EXCLUSION OF VOUCHERS AND REBATES FROM TAXATION.—

(1) FEDERAL PROGRAMS.—A voucher issued under the Program or a cash rebate issued under subsection (c)(3) shall not be regarded as income and shall not be regarded as a resource for the determination of eligibility for the receipt of the voucher or rebate (or the recipient’s spouse or other family or household members) for benefits or assistance, or the amount or extent of benefits or assistance, upon the Federal Tax Code of 1986.

(2) TAXATION.—A voucher issued under the Program or a cash rebate issued under subsection (c)(3) shall not be considered as gross income for purposes of the Internal Revenue Code of 1986.

(c) DEFINITIONS.—

(1) THE TERM ‘‘AUTOMOBILE’’ MEANS AN AUTOMOBILE OR WORK TRUCK (AS SUCH TERMS ARE DEFINED IN SECTION 32901(a) OF TITLE 49, UNITED STATES CODE);

(2) THE TERM ‘‘DEALER’’ MEANS A PERSON LICENSED BY A STATE WHO ENGAGES IN THE SALE OF NEW OR USED AUTOMOBILES TO ULTIMATE PURCHASERS;

(3) THE TERM ‘‘ELIGIBLE TRADE-IN VEHICLE’’ MEANS AN AUTOMOBILE OR A WORK TRUCK (AS SUCH TERMS ARE DEFINED IN SECTION 32901(a) OF TITLE 49, UNITED STATES CODE) THAT WAS MANUFACTURED BEFORE MODEL YEAR 2005;

(4) THE TERM ‘‘PERSON’’ MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION, BUSINESS TRUST, OR ANY ORGANIZED GROUP OF PERSONS;

(5) THE TERM ‘‘PROGRAM’’ MEANS THE AUTOMOBILE VOUCHER PROGRAM ESTABLISHED UNDER THIS SECTION;

(6) THE TERM ‘‘QUALIFYING LEASE’’ MEANS A LEASE OF AN AUTOMOBILE FOR A PERIOD NOT LESS THAN 5 YEARS;

(7) THE TERM ‘‘SECRETARY’’ MEANS THE SECRETARY OF TRANSPORTATION ACTING THROUGH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; AND

(8) THE TERM ‘‘VEHICLE IDENTIFICATION NUMBER’’ MEANS THE 17-CHARACTER NUMBER USED BY THE AUTOMOBILE INDUSTRY TO IDENTIFY INDIVIDUAL AUTOMOBILES.

SEC. 02. REALLOCATION OF APPROPRIATIONS.

From the amounts appropriated under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), the Director of the Office of Management and Budget may allocate not more than $4,000,000,000 to carry out
the Automobile Voucher Program established under this title.

SEC. 03. EMERGENCY DESIGNATION.

For purposes of Senate enforcement, this title is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 405 of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

NOTICE OF HEARING
COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a business meeting has been scheduled before the Committee on Energy and Natural Resources. The business meeting will be held on Tuesday, June 9, 2009, at 10 a.m., in room SD-366 of the Dirksen Senate office building.

The purpose of the business meeting is to consider pending energy legislation.

For further information, please contact Sam Fowler at (202) 224-7571 or Amanda Kelly at (202) 224-6836.

AUTHORITY FOR COMMITTEES TO MEET
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Thursday, June 4, 2009, at 10 a.m. in room 106 of the Dirksen Senate office building.

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

COMMITTEE ON ARMED SERVICES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, June 4, 2009, at 9:30 a.m.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, June 4, 2009, at 9:30 a.m.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a business meeting on Thursday, June 4, 2009 at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building.

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

PRIVILEGES OF THE FLOOR

Mr. AKAKA. Madam President, I ask unanimous consent that my fellow, Louise Kitamura, be granted the privileges of the floor for today.

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

Mr. VOINOVICH. Mr. President, I ask unanimous consent that T.J. Kim, a fellow in my office, be granted floor privileges for today.

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

Mr. SANDERS. Mr. President, I ask unanimous consent that Gail Hansen, a fellow in my office, be granted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.
Ms. CANTWELL. Mr. President, I rise today to congratulate the University of Washington softball team on their 2009 NCAA National Championship.

On June 2, led by National Player of the Year Danielle Lawrie and head coach Heather Tarr, the Huskies earned their first title in a thrilling 3–2 victory over the University of Florida Gators;

Whereas University of Washington pitcher Danielle Lawrie was named the Women's College World Series Most Valuable Player and the USA Softball National Collegiate Player of the Year;

Whereas the Huskies finished the 2009 season with an impressive record of 51–12;

Whereas the members of the 2009 University of Washington softball team are excellent representatives of a university that is one of the premier academic institutions in Washington State, producing many outstanding student-athletes and other leaders; and

Whereas the members of the women's softball team have brought great honor to themselves, their families, the University of Washington, and the State of Washington: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the University of Washington softball team for winning the 2009 Women's College World Series;

(2) recognizes the achievements of the players, students, and staff whose hard work and dedication helped the University of Washington win the championship; and

(3) respectfully requests the Secretary of the Senate to transmit an enrolled copy of this resolution to—

(A) Mark A. Emmert, president of the University of Washington;

(B) Scott Woodward, director of athletics;

and

(C) Heather Tarr, head coach of the University of Washington softball team.

ORDERS FOR MONDAY, JUNE 8, 2009

Mr. BROWN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m. on Monday, June 8; that following the prayer and pledge, the Journal of proceedings be approved; and that the members be notified that there will be a period of morning business until 5:30 p.m., with Senators permitted to speak for up to 10 minutes each; that following morning business, the Senate resume consideration of Calendar No. 47, H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, under the previous order.

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

PROGRAM

Mr. BROWN. Mr. President, as a reminder, the filing deadlines are 3 p.m. Monday for first-degree amendments and 4:30 p.m. Monday for second-degree amendments. The next vote will occur on Monday at 5:30 p.m.

ADJOURNMENT UNTIL MONDAY, JUNE 8, 2009, AT 2 P.M.

Mr. BROWN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:32 p.m., adjourned until Monday, June 8, 2009, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate:

FEDERAL LABOR RELATIONS AUTHORITY

JULIA AKINS CLARK, OF MARYLAND, TO BE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS. VICE COLLEEN DUFFY KEKO, RESIGNED.

BRERETON D. Duke, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS EXPIRING JUNE 25, 2014. VICE DALE C. CABANISS, RESIGNED.

DEPARTMENT OF JUSTICE

PREET BHARARA, OF NEW YORK, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS. VICE MI- CHAEL A. GARCIA, RESIGNED.

TRENT L. COFFIN, OF VERMONT, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF VERMONT FOR THE TERM OF FOUR YEARS. VICE THOMAS D. ANDERSON, RESIGNED.

DENNIS A. DURKAN, OF WASHINGTON, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WASHINGTON FOR THE TERM OF FOUR YEARS. VICE JOHN MCKAY, RESIGNED.

PAUL J. FISHMAN, OF NEW JERSEY, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW JERSEY FOR THE TERM OF FOUR YEARS. VICE CHRISTOPHER JAMES CHRISTIE, RESIGNED.

B. TODD JONES, OF MINNESOTA, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF MINNESOTA, FOR THE TERM OF FOUR YEARS. VICE RACHEL K. PAULHIS, RESIGNED.

JOHN P. KACAVAS, OF NEW HAMPSHIRE, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW HAMPSHIRE FOR THE TERM OF FOUR YEARS. VICE THOMAS P. CULANTOUCO, RESIGNED.

JOYCE WHITE VALETTE, OF ALABAMA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF ALABAMA FOR THE TERM OF FOUR YEARS. VICE ALICE HOWIE MARTIN.

CHRISTOPHER S. SCHROEDER, OF NORTH CAROLINA, TO BE AN ASSISTANT ATTORNEY GENERAL. VICE ELISE ELIGESTON C. COOK, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WAS APPOINTED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant general

MAJ. GEN. ROBERT W. CONR

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNIFIED STATES AIR FORCE TO THE GRADE INDICATED WAS APPOINTED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 624:

To be general

LT. GEN. RAYMOND E. JOHNS, JR.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WAS APPOINTED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. DOUGLAS J. ROBB

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WAS APPOINTED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

VINCENT G. AUTH

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES COAST GUARD TO THE GRADE INDICATED WAS APPOINTED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 624:

To be warrant officer

CHRISTOPHER H. SCHROEDER, OF NORTH CAROLINA, TO BE AN ASSISTANT ATTORNEY GENERAL. VICE ELISE ELIGESTON C. COOK, RESIGNED.
CONSTITUTED COMMITTEE OF THE SENATE.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE GLOBE IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624

The following named officers for appointment to the grade indicated in the United States Navy

To be captain

Luis A. Benavides
Richard D. Bingham
Philip J. Blake
Michael D. Bridges
Daniel J. Connell
Mary F. David
William J. Davis
Eugene M. Delara
Denny W. Denton
Mary T. Donohue
John P. Ferguson
Michelle J. Hancock
Richard J. Jehur
Mary E. Jenkins
Scott L. Johnston
David R. Jones
Marvin L. Jones
Jeanmarie P. Jonson
Kevin L. Kluwe
Kim L. Lefevrhe
Jamis A. Leteux
Maria K. Majar
Manuel K. Nagy
Robert E. Newell
Joseph J. Pickel
Robert A. Rahal
John A. Ralph
Dylan D. Schermbo
Russell D. Seiling
Leslie L. Sims
Elizabeth A. Smith
Shirley R. Sozy
Anni M. Swap
Michael A. Warrington
Timothy H. Weber

The following named officers for appointment to the grade indicated in the United States Navy

To be captain

David Heyman, of the District of Columbia, to be

Executive nomination confirmed by

DEPARTMENT OF HOMELAND SECURITY

David Heyman, of the District of Columbia, to be an Assistant Secretary of Homeland Security.

The above nomination was approved subject to the nominee’s commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.